

Exhibit 1

address numerous issues that do not typically arise in an interpleader action); *Westlake Styrene, LLC v. U.S.*, No. H-10-2631, 2011 WL 643265, at *3-4 (S.D. Tex. Feb. 16, 2011) (awarding additional attorneys' fees to the stakeholder due to defendant's engagement in unnecessary motion practice).

John Hancock's original Motion requested an order awarding its attorneys' fees and expenses in the amount of \$43,887.55 as a result of the filing and prosecution of the interpleader. That Motion, and its supporting declaration, was filed on September 18, 2019. Since that time, John Hancock has expended an additional \$63,206.95 in reasonable attorneys' fees in dealing with the resolution of Defendant the Estate of Jennifer Lauren Wheatley's ("Wheatley Estate") baseless counterclaims and a premature appeal by Defendant Jeremy Ward ("Ward"), which unnecessarily protracted the resolution of this interpleader action. As a result, John Hancock has expended total fees of \$106,199.95 plus \$894.55 in expenses over the life of the case.

In addition to the time previously spent by John Hancock in an effort to dismiss the counterclaims filed by the Wheatley Estate and Ward, John Hancock was forced to expend additional significant fees in an effort to get all but one counterclaim asserted by the Wheatley Estate dismissed once the counterclaims were revived by the Court. In this effort, the following filings, and corresponding research, by John Hancock was necessitated: (1) opposition to Wheatley Estate's motion for leave to amend its answer, crossclaim and counterclaims (ECF 112); (2) motion for protective order to quash improper written discovery and corporate deposition requested by Wheatley Estate (ECF 119); (3) opposition to the Wheatley Estate's motion for determination of choice of law on counterclaims (ECF 124); (4) opposition to the Wheatley Estate's motion to modify scheduling order (ECF 129); and (5) opposition to the Wheatley Estate's motion for attorneys' fees (ECF 149). Most recently, the Wheatley Estate

sought the amendment of the Court's order dismissing its counterclaim for statutory interest and attorneys' fees. John Hancock again had to submit argument to support the Court's initial ruling (ECF 152).

As to the one surviving counterclaim asserted, for breach of contract, John Hancock served an Offer of Judgment on January 30, 2020 (ECF 113), long before the Wheatley Estate filed its motion for partial summary judgment on that claim on March 16, 2020 (ECF 125). The Offer of Judgment, in the amount of \$25,000, more than covered the damages resulting from such claim - \$16,069.94 plus interest.² However, after the Wheatley Estate failed to respond to the Offer of Judgment, it proceeded to file a motion for partial summary judgment on the claim, to which John Hancock had to respond (ECF 131).

As previously briefed in detail to the Court (*see* ECF 119, p. 6-7; ECF 131, p. 4-6, 8) John Hancock has repeatedly attempted to get the Defendants to settle their claims to the interpleader proceeds and has also attempted to resolve the Wheatley Estate's counterclaims via settlement, all to no avail. Given its good faith efforts to resolve this case at every juncture, John Hancock believes that an award of attorneys' fees related to its settlement efforts is also warranted.

As stated in its original Motion, the hours billed by BCLP were reasonable and necessary in this action. Thirty-four and seven-tenths (34.7) hours were spent to investigate, prepare and file the interpleader action, prepare the required corporate disclosure statement, and to request and deposit the annuity proceeds into the Court's registry. The remaining three hundred (300) hours were spent responding to Defendants' baseless counterclaims and other various motions, engaging in communications encouraging settlement, attending mandated court conferences,

² See John Hancock's Opposition to the Wheatley Estate's Motion to Revise Order Entered on 5/28/2020 which provides support for the argument that only \$1,553.43 in prejudgment interest is warranted here. (ECF 152)

preparing Rule 26 disclosures, participating in the Rule 26(f) conference, and responding to multiple sets of written discovery from each Defendant, including the review and production of hundreds of pages of documents. See **Exhibit 1**, Declaration of Jennifer L. Berhorst.

Plaintiff John Hancock respectfully requests that the Court enter an order to reimburse it \$106,199.95 for the attorneys' fees and \$894.55 for the expenses incurred in this interpleader action and for such other and further relief as the Court deems necessary.

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ Jennifer L. Berhorst

Gregory J. Sachnik
Texas Bar No. 17503800
S.D. Texas No. 9757
2200 Ross Avenue, Suite 3300
Dallas, Texas 75201
(214) 721.8000 – Telephone
(214) 721.8100 – Fax
E-Mail: Gregory.sachnik@bclplaw.com

Admitted Pro Hac Vice:

W. Perry Brandt
Missouri Bar No. 28292
Jennifer L. Berhorst
Missouri Bar No. 61784
1200 Main Street, Suite 3800
Kansas City, MO 64105-2100
Telephone: (816) 374-3200
Facsimile: (816) 374-3300
perry.brandt@bclplaw.com
jennifer.berhorst@bclplaw.com

*Attorneys for Plaintiff John Hancock Life
Insurance Company (U.S.A.)*

CERTIFICATE OF CONFERENCE

In compliance with Local Civil Rule 7.1, on July 13, 2020 I conferred with counsel for the Estate of Jennifer Lauren Wheatley by telephone regarding the relief requested in the foregoing Motion. The Wheatley Estate opposes the motion and counsel could not agree as to a disposition of the motion.

/s/ Jennifer L. Berhorst

Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of July, 2020, the foregoing was served upon all counsel of record through CM/ECF filing system.

/s/ Jennifer L. Berhorst

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**John Hancock Life Insurance Company)
(U.S.A.) f/k/a Manufacturers)
Life Insurance Company,)**

Plaintiff,

v.

**The Estate of Jennifer Lauren Wheatley)
c/o Louis A. Wheatley, et al.)**

Defendants.)

Civil Action 4:18-cv-02869

SUPPLEMENTAL DECLARATION OF JENNIFER L. BERHORST

1. My name is Jennifer L. Berhorst. I am a partner at the law firm of Bryan Cave Leighton Paisner LLP (“BCLP”) in its Kansas City, Missouri office. I am the lead attorney representing John Hancock Life Insurance Company (U.S.A.) f/k/a Manufacturers Life Insurance Company (“John Hancock”) in this action. By virtue of my experience as a lawyer and my representation of John Hancock in this case, I have personal knowledge of the facts stated below, and they are all true and correct.

2. I provide the following additional information in support of John Hancock’s Motion for an Award of Attorneys’ Fees.

3. In addition to the lawyers and paralegals that were previously identified, associate William J. Easley (“Easley”) provided limited research assistance on this matter following the departure of Hobbs from the firm. Easley’s rate for this case is \$360 per hour. Additionally, paralegal, Ann Woeppel (“Woeppel”) provided limited legal assistance when the primary paralegals assigned to this matter were unavailable. The worked performed by Woeppel would

have otherwise been performed by attorneys at a higher hourly rate. Easley and Woeppel at all times worked under my supervision as well as the supervision of the Texas sponsoring attorneys.

4. John Hancock was invoiced in this case for services rendered by BCLP on a monthly basis. Legal services were rendered based upon established hourly rates and there were no fixed or contingent fees associated with the representation of John Hancock.

5. All BCLP billing personnel were required to keep contemporaneous records of the tasks they performed and the amount of time expended. BCLP submitted monthly billing invoices to John Hancock showing the date, the identity of each person who rendered the services, a general description of the services rendered by each person, the number of hours devoted to those services, and the total fee charge attributed to each person's services. Prior to submitting the monthly billing invoices to John Hancock, the time entries and expenses were reviewed and work that was unproductive, duplicative or unnecessary was written off. A report of all time billed for work completed from September 1, 2019 through July 13, 2020 (the "Time Report") is attached hereto as **Exhibit 1**. The report is prepared from the data entered into the computer accounting system directly from each attorney's and paralegal's timesheets and is the same data generated into the monthly electronic invoices sent to John Hancock. The Time Report is redacted on the basis of attorney-client and work-product privileges. I have also redacted and reduced the total fee request for some issues that were tangential to the representation of John Hancock in this matter.


6. In addition to the fees previously submitted, BCLP has billed and John Hancock has paid an additional \$63,206.95 in attorney's fees incurred from September 1, 2019 through July 13, 2020, excluding fees originally written-off or recently adjusted given their relation to the action, for which reimbursement is now requested. *See* Exhibit 1. In my opinion, these fees and

costs were both reasonable and necessary given the tasks required, the tasks performed, and based upon the customary hourly rates for such services.

7. I have reviewed John Hancock's Supplemental Brief in Support of Motion for Award of Attorneys' Fees and Expenses and the factual statements contained therein are true and correct to the best of my personal knowledge. I have also reviewed the detailed billing descriptions in the invoices attached hereto as Exhibit 1. These records are kept by BCLP in the regular course of business and it was in the regular course of the business for BCLP or an employee or representative of BCLP, with knowledge of the act, event, condition, opinion or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonable time soon thereafter. The records attached hereto are exact duplicates of the electronic records maintained by BCLP.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 14th day of July, 2020.


Jennifer L. Berhorst

Date	Initials	Name / Invoice Number	Hours	Amount	Description
9/3/2019	10679	Jennifer L. Berhorst	0.1	41.4	Analyze court's minute entry regarding hearing
10/10/2019		Invoice=10899216			on motion to dismiss crossclaims.
9/3/2019	10679	Jennifer L. Berhorst	1.1	455.4	Begin drafting motion for attorneys fees.
10/10/2019		Invoice=10899216			
9/3/2019	10679	Jennifer L. Berhorst	0.1	41.4	Draft correspondence to client regarding
10/10/2019		Invoice=10899216			resolution of litigation.
9/3/2019	20974	Gregory J. Sachnik	0.2	116	Assess orders and potential need to prepare
10/10/2019		Invoice=10899216			motion for attorneys fees.
9/4/2019	10679	Jennifer L. Berhorst	0.4	165.6	Draft correspondence to client regarding
10/10/2019		Invoice=10899216			attorney's fee recovery strategy.
9/4/2019	10679	Jennifer L. Berhorst	0.9	372.6	Analyze client bills to determine potential fee
10/10/2019		Invoice=10899216			and cost recovery.
9/4/2019	10679	Jennifer L. Berhorst	0.6	248.4	Strategize regarding negotiation of attorneys'
10/10/2019		Invoice=10899216			fee recovery.
9/4/2019	10679	Jennifer L. Berhorst	1.3	538.2	Research in support of motion for award of
10/10/2019		Invoice=10899216			attorney's fees.
9/4/2019	11546	Guadalupe Rojas-Wiederaenders			
10/10/2019		Invoice=10899216	0.5	100	Receipt and review e-mail from J. Berhorst
					requesting samples of motions for fees and
					costs in federal district court; run search and
					provide documents.
9/5/2019	10679	Jennifer L. Berhorst	3.2	1,324.80	Continue drafting motion for attorneys' fees.
10/10/2019		Invoice=10899216			
9/6/2019	10679	Jennifer L. Berhorst	1.7	703.8	Continue drafting brief in support of motion
10/10/2019		Invoice=10899216			for attorneys' fees.
9/7/2019	21524	Sarah R. Holdmeyer	1.8	504	Research attorneys' fee awards for motion for
10/10/2019		Invoice=10899216			attorneys' fees.
9/8/2019	21524	Sarah R. Holdmeyer	1.6	448	Continue drafting Motion for Attorneys' Fees
10/10/2019		Invoice=10899216			and TOC to Motion.
9/9/2019	10679	Jennifer L. Berhorst	0.9	372.6	Revise motion for attorneys' fees and attorney
10/10/2019		Invoice=10899216			bills in support.
9/9/2019	10679	Jennifer L. Berhorst	0.2	82.8	Analyze proposed order on dismissal of J.
10/10/2019		Invoice=10899216			Ward's cross-claim and award of interplead
					funds to Wheatley Estate and correspond with
					client regarding the same.
9/9/2019	10679	Jennifer L. Berhorst	0.3	124.2	Analyze motion for summary judgment filed by
10/10/2019		Invoice=10899216			Wheatley Estate.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
9/9/2019	10679	Jennifer L. Berhorst	1.3	538.2	Draft declaration in support of motion for
10/10/2019		Invoice=10899216			attorney's fees.
9/9/2019	9483	Ann Woepfel			Prepare exhibit regarding attorneys' fees by
10/10/2019		Invoice=10899216	0.5	107.5	removing confidential information in
					preparation for transmittal to court with
					motion.
9/10/2019	9483	Ann Woepfel			Prepare exhibit containing cases cited in brief
10/10/2019		Invoice=10899216	0.6	129	along with an index of same for submission to
					court.
9/10/2019	10679	Jennifer L. Berhorst	0.3	124.2	Correspondence with all counsel regarding
10/10/2019		Invoice=10899216			consent to motion for attorneys' fee.
9/10/2019	10679	Jennifer L. Berhorst	0.5	207	Draft proposed order on motion for attorneys
10/10/2019		Invoice=10899216			fees.
9/10/2019	10679	Jennifer L. Berhorst	0.6	248.4	Analyze Wheatley Estate's draft motion to
10/10/2019		Invoice=10899216			modify order on motion to dismiss counterclaims
					and supporting material and strategize
					regarding response.
9/10/2019	10679	Jennifer L. Berhorst	0.2	82.8	Update table of authorities in support of
10/10/2019		Invoice=10899216			motion for attorneys' fees.
9/10/2019	20974	Gregory J. Sachnik	0.4	232	Review and revise draft motion for fees and
10/10/2019		Invoice=10899216			proposed order for compliance with local rules.
9/10/2019	21524	Sarah R. Holdmeyer	0.6	168	Begin researching issues raised by the Wheatley
10/10/2019		Invoice=10899216			Estate in its Motion for Reconsideration.
9/10/2019	21524	Sarah R. Holdmeyer	0.6	168	Review motion for reconsideration filed by the
10/10/2019		Invoice=10899216			Wheatley Estate.
9/11/2019	21524	Sarah R. Holdmeyer	1	280	Research viability of the Wheatley Estate's
10/10/2019		Invoice=10899216			Motion for Reconsideration.
9/11/2019	10679	Jennifer L. Berhorst	0.1	41.4	Analyze correspondence from counsel for J. Ward
10/10/2019		Invoice=10899216			regarding return of allegedly erroneously paid
					funds.
9/11/2019	10679	Jennifer L. Berhorst	0.5	207	Correspondence with client regarding resolution
10/10/2019		Invoice=10899216			of various proposed motions.
9/12/2019	10679	Jennifer L. Berhorst	0.2	82.8	Correspondence with all counsel regarding

Date	Initials	Name / Invoice Number	Hours	Amount	Description
10/10/2019		Invoice=10899216			resolution of remaining issues.
9/13/2019	10679	Jennifer L. Berhorst	0.1	41.4	Correspondence with counsel for Wheatley Estate
10/10/2019		Invoice=10899216			regarding resolution of attorneys' fee motion.
9/17/2019	10679	Jennifer L. Berhorst	0.1	41.4	Correspondence with counsel for Wheatley Estate
10/10/2019		Invoice=10899216			regarding declination of offer to settle
					litigation.
9/17/2019	20974	Gregory J. Sachnik	0.2	116	Follow-up regarding need to submit motion for
10/10/2019		Invoice=10899216			fees.
9/18/2019	20974	Gregory J. Sachnik	0.5	290	Assess motion to alter minute entry order (.2);
10/10/2019		Invoice=10899216			finalize motion for fees (.3).
9/18/2019	10679	Jennifer L. Berhorst	0.5	207	Analyze multiple proposed motions received by
10/10/2019		Invoice=10899216			Wheatley Estate and communicate with client
					regarding the same.
9/18/2019	10679	Jennifer L. Berhorst	0.6	248.4	Final edits to motion for attorneys' fees and
10/10/2019		Invoice=10899216			supporting documents in preparation for filing.
9/18/2019	11546	Guadalupe Rojas-Wiederaenders			
10/10/2019		Invoice=10899216	0.9	180	Receipt and review of motion for attorneys'
					fees and attachments; revise and finalize
					signature lines; preparation of documents for
					filing; file with US District Court; send
					confirmation to all.
9/30/2019	21524	Sarah R. Holdmeyer	1.6	448	Review motion for reconsideration and research
10/10/2019		Invoice=10899216			in preparation of drafting response in
					opposition.
10/1/2019	10679	Jennifer L. Berhorst	0.2	82.8	Analyze Ward's opposition to motion for summary
11/12/2019		Invoice=10906679			judgment.
10/1/2019	10679	Jennifer L. Berhorst	0.1	41.4	Correspondence with client regarding pending
11/12/2019		Invoice=10906679			motions and potential for settlement.
10/1/2019	10679	Jennifer L. Berhorst	0.1	41.4	Analyze Ward's opposition to Estate's motion
11/12/2019		Invoice=10906679			for reconsideration.
10/1/2019	10679	Jennifer L. Berhorst	0.1	41.4	Analyze Ward's proposed motion for
11/12/2019		Invoice=10906679			reconsideration of March 2019 order dismissing
					counterclaims.
10/2/2019	10679	Jennifer L. Berhorst	0.9	372.6	Strategize arguments in response to pending
11/12/2019		Invoice=10906679			motions to reinstate counterclaims.
10/2/2019	10679	Jennifer L. Berhorst	0.5	207	Correspondence with client regarding strategy
11/12/2019		Invoice=10906679			for resolution of outstanding motions including
					potential settlement offers to resolve
					outstanding potential counterclaims.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
10/2/2019	21524	Sarah R. Holdmeyer	2	560	Research for drafting opposition to motions to
11/12/2019		Invoice=10906679			revise orders.
10/2/2019	21524	Sarah R. Holdmeyer	1.5	420	Review various motions, orders, and pleadings
11/12/2019		Invoice=10906679			in preparation of drafting opposition to
					motions to revise orders.
10/3/2019	21524	Sarah R. Holdmeyer	4.6	1,288.00	Continue drafting Oppositions to Motions to
11/12/2019		Invoice=10906679			Revise.
10/4/2019	21524	Sarah R. Holdmeyer	0.9	252	Continue drafting Opposition to Motions to
11/12/2019		Invoice=10906679			Revise.
10/4/2019	10679	Jennifer L. Berhorst	0.1	41.4	Draft correspondence to client enclosing draft
11/12/2019		Invoice=10906679			opposition to Wheatley Estate's motions for
					reconsideration.
10/4/2019	10679	Jennifer L. Berhorst	0.8	331.2	Revise opposition to Estate's motions
11/12/2019		Invoice=10906679			requesting reinstatement of counterclaims and
					revisions to proposed final judgment to include
					additional arguments related to Court's
					intentions in prior orders.
10/7/2019	10679	Jennifer L. Berhorst	0.2	82.8	Analyze client's revisions to pending motions.
11/12/2019		Invoice=10906679			
10/7/2019	10679	Jennifer L. Berhorst	0.2	82.8	Correspondence with client regarding potential
11/12/2019		Invoice=10906679			settlement negotiations.
10/7/2019	21524	Sarah R. Holdmeyer	0.6	168	Revise opposition to the Estate's Motion for
11/12/2019		Invoice=10906679			Reconsideration, incorporating client's
					revisions.
10/8/2019	20974	Gregory J. Sachnik	0.3	174	Review response to motion to alter orders to
11/12/2019		Invoice=10906679			prepare for submission.
10/8/2019	10679	Jennifer L. Berhorst	0.3	124.2	Final revisions to opposition to Estate's
11/12/2019		Invoice=10906679			motion to revise prior order.
10/8/2019	10679	Jennifer L. Berhorst	0.2	82.8	Draft correspondence to counsel for J. Ward
11/12/2019		Invoice=10906679			regarding settlement of remaining claims.
10/8/2019	11546	Guadalupe Rojas-Wiederaenders	0.3	61.5	File Motion with Court.
11/12/2019		Invoice=10906679			
10/8/2019	11546	Guadalupe Rojas-Wiederaenders	0.3	61.5	
11/12/2019		Invoice=10906679			Finalize Response to Motion to Revise Order.
10/8/2019	11546	Guadalupe Rojas-Wiederaenders	0.1	20.5	Preparation of Motion for filing.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
11/12/2019		Invoice=10906679			
10/9/2019	11546	Guadalupe Rojas-Wiederaenders	0.3	61.5	
11/12/2019		Invoice=10906679			Receipt and review of ECF notices, download
					documents, send to docketing if necessary and
					distribute.
10/9/2019	11546	Guadalupe Rojas-Wiederaenders	0.2	41	
11/12/2019		Invoice=10906679			Draft revise and finalize form to order
					transcript and file same.
10/9/2019	10679	Jennifer L. Berhorst	0.1	41.4	Analyze Ward's brief with additional support
11/12/2019		Invoice=10906679			opposing Wheatley Estate's motion for summary
					judgment.
10/10/2019	11546	Guadalupe Rojas-Wiederaenders	0.1	20.5	
11/12/2019		Invoice=10906679			Receipt and review of e-mail from Court
					Reporter regarding invoice for transcript.
10/10/2019	11546	Guadalupe Rojas-Wiederaenders	0.3	61.5	
11/12/2019		Invoice=10906679			Telephone conference with Court Reporter
					requesting W-9.
10/14/2019	10679	Jennifer L. Berhorst	0.5	207	Analyze the Estate's opposition to motion for
11/12/2019		Invoice=10906679			award of attorneys' fees.
10/15/2019	10679	Jennifer L. Berhorst	1.5	621	Revise case law cited in the Estate's
11/12/2019		Invoice=10906679			opposition to motion for attorneys fees and
					outline reply brief.
10/15/2019	10679	Jennifer L. Berhorst	0.1	41.4	Correspondence with counsel for J. Ward to
11/12/2019		Invoice=10906679			discuss resolution of counterclaim.
10/15/2019	11546	Guadalupe Rojas-Wiederaenders	0.5	102.5	
11/12/2019		Invoice=10906679			Draft, revise and finalize letter to court
					reporter forwarding check for hearing
					transcript.
10/16/2019	10679	Jennifer L. Berhorst	0.2	82.8	Draft motion for extension of time to file
11/12/2019		Invoice=10906679			reply in support of motion for attorneys' fees.
10/18/2019	10679	Jennifer L. Berhorst	0.2	82.8	Analyze Ward's motion for leave to file
11/12/2019		Invoice=10906679			opposition to motion for attorneys' fees out of
					time.
10/18/2019	10679	Jennifer L. Berhorst	0.3	124.2	Analyze Wheatley's reply in support of motion

Date	Initials	Name / Invoice Number	Hours	Amount	Description
11/12/2019		Invoice=10906679			for reconsideration of March 14, 2019 minute order.
10/22/2019	10679	Jennifer L. Berhorst	2.8	1,159.20	Draft reply in support of motion for award of attorneys' fees.
11/12/2019		Invoice=10906679			
10/22/2019	21524	Sarah R. Holdmeyer	3.6	1,008.00	Draft opposition to Ward's Motion for Reconsideration.
11/12/2019		Invoice=10906679			
10/23/2019	21524	Sarah R. Holdmeyer	0.2	56	Finalize opposition to Motion for Reconsideration.
11/12/2019		Invoice=10906679			
10/23/2019	20974	Gregory J. Sachnik	0.8	464	Review and revise draft response to motion to reconsider (.5); review and revise draft reply in support of motion for fees (.3).
11/12/2019		Invoice=10906679			
10/23/2019	10679	Jennifer L. Berhorst	0.5	207	Revise opposition to Ward's motion for reconsideration of March 14, 2019 order.
11/12/2019		Invoice=10906679			
10/23/2019	10679	Jennifer L. Berhorst	0.9	372.6	Draft declaration in support of reply to attorneys' fees request.
11/12/2019		Invoice=10906679			
10/23/2019	10679	Jennifer L. Berhorst	0.9	372.6	Revise reply in support of motion for attorneys' fees.
11/12/2019		Invoice=10906679			
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.2	41	
11/12/2019		Invoice=10906679			Download conformed copy of reply and forward to counsel.
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.1	20.5	
11/12/2019		Invoice=10906679			Receipt and review of Response to Motion for Consideration filed by Ward from J. Berhorst.
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.3	61.5	File reply and exhibit.
11/12/2019		Invoice=10906679			
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.5	102.5	Draft order denying motion.
11/12/2019		Invoice=10906679			
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.2	41	Forward same to G. Sachnik for review.
11/12/2019		Invoice=10906679			
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.2	41	
11/12/2019		Invoice=10906679			Receipt and review of e-mail from J. Berhorst forwarding reply in support of motion for attorneys' fees.
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.2	41	
11/12/2019		Invoice=10906679			Review docket to determine if order filed with original motion for attorneys' fees.
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.2	41	
11/12/2019		Invoice=10906679			E-mail to all counsel advising of same.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
10/23/2019	11546	Guadalupe Rojas-Wiederaenders	0.4	82	
11/12/2019		Invoice=10906679			Preparation of reply and exhibit for filing.
10/25/2019	10679	Jennifer L. Berhorst	0.1	41.4	Analyze Estate's motion to revise July 3, 2019
11/12/2019		Invoice=10906679			order denying amendment to counterclaims.
10/30/2019	10679	Jennifer L. Berhorst	0.1	41.4	Correspondence with counsel for Estate
11/12/2019		Invoice=10906679			regarding payment of annuity funds in arrears.
11/5/2019	10679	Jennifer L. Berhorst	0.3	124.2	Draft correspondence to client summarizing case
12/9/2019		Invoice=10913882			status and preparation for trial.
11/5/2019	10679	Jennifer L. Berhorst	1.6	662.4	Analyze local rules and judge rules in order to
12/9/2019		Invoice=10913882			strategize for trial preparation.
11/5/2019	20974	Gregory J. Sachnik	0.1	58	Assess need for trial attendance and staffing.
12/9/2019		Invoice=10913882			
11/5/2019	21524	Sarah R. Holdmeyer	0.6	168	Draft opposition to motion for extension of
12/9/2019		Invoice=10913882			time.
11/5/2019	21524	Sarah R. Holdmeyer	0.2	56	Review Ward's motion for extension of time.
12/9/2019		Invoice=10913882			
11/5/2019	21524	Sarah R. Holdmeyer	0.4	112	Research in preparation of drafting opposition
12/9/2019		Invoice=10913882			to motion for extension of time.
11/5/2019	11546	Guadalupe Rojas-Wiederaenders	0.1	20.5	
12/9/2019		Invoice=10913882			Download conformed copy and upload to i-Manage.
11/5/2019	11546	Guadalupe Rojas-Wiederaenders	0.3	61.5	
12/9/2019		Invoice=10913882			Draft order and forward to J. L. Berhorst for
					review.
11/5/2019	11546	Guadalupe Rojas-Wiederaenders	0.2	41	File documents.
12/9/2019		Invoice=10913882			
11/5/2019	11546	Guadalupe Rojas-Wiederaenders	0.2	41	Preparation of documents for filing.
12/9/2019		Invoice=10913882			
11/5/2019	11546	Guadalupe Rojas-Wiederaenders	0.1	20.5	
12/9/2019		Invoice=10913882			Receipt and review of email from J. Berhorst
					regarding drafting of proposed order denying
					Ward's motion for extension of time.
11/8/2019	21524	Sarah R. Holdmeyer	4.1	1,148.00	Draft opposition to Motion to Revise Order
12/9/2019		Invoice=10913882			filed by the Wheatley Estate.
11/11/2019	21524	Sarah R. Holdmeyer	1.1	308	Continue drafting opposition to motion to
12/9/2019		Invoice=10913882			revise orde.
11/11/2019	21524	Sarah R. Holdmeyer	0.8	224	Additional research for opposition.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
12/9/2019		Invoice=10913882			
11/11/2019	21524	Sarah R. Holdmeyer	0.3	84	Draft table of contents to opposition.
12/9/2019		Invoice=10913882			
11/11/2019	21524	Sarah R. Holdmeyer	0.4	112	Draft proposed order.
12/9/2019		Invoice=10913882			
11/11/2019	20974	Gregory J. Sachnik	0.3	174	Review pre-trial disclosures and strategize
12/9/2019		Invoice=10913882			regarding need for John Hancock to participate
					given prior abatement of claims.
11/11/2019	10679	Jennifer L. Berhorst	0.2	82.8	Analyze witness and exhibit list received from
12/9/2019		Invoice=10913882			J. Ward.
11/11/2019	10679	Jennifer L. Berhorst	0.3	124.2	Revise opposition to Wheatley Estate's motion
12/9/2019		Invoice=10913882			to revise order entered on July 3, 2019.
11/12/2019	20974	Gregory J. Sachnik	0.3	174	Review opposition to motion to revise order and
12/9/2019		Invoice=10913882			associated exhibits for compliance with local
					rules.
11/12/2019	21524	Sarah R. Holdmeyer	0.4	112	Conference call with client to determine
12/9/2019		Invoice=10913882			strategy for settling matter before trial date.
11/12/2019	10679	Jennifer L. Berhorst	0.1	41.4	Draft correspondence to client providing update
12/9/2019		Invoice=10913882			on status of settlement negotiations.
11/12/2019	10679	Jennifer L. Berhorst	0.3	124.2	Telephone conference with C. Moore to discuss
12/9/2019		Invoice=10913882			resolution of pending interpleader claims.
11/12/2019	10679	Jennifer L. Berhorst	0.5	207	Telephone conference with client to discuss
12/9/2019		Invoice=10913882			trial preparation and settlement strategy.
11/12/2019	11546	Guadalupe Rojas-Wiederaenders	0.5	102.5	
12/9/2019		Invoice=10913882			File with Court, download and upload to
					i-Manage.
11/12/2019	11546	Guadalupe Rojas-Wiederaenders	0.7	143.5	
12/9/2019		Invoice=10913882			Proof opposition to motion to revise order,
					appendix and proposed order.
11/12/2019	11546	Guadalupe Rojas-Wiederaenders	0.3	61.5	
12/9/2019		Invoice=10913882			Preparation of all documents for filing and
					service.
11/12/2019	21524	Sarah R. Holdmeyer	0.5	140	Review documents received from client regarding
12/9/2019		Invoice=10913882			payments made to Ward.
11/13/2019	21524	Sarah R. Holdmeyer	0.4	112	Review communications with opposing counsel

Date	Initials	Name / Invoice Number	Hours	Amount	Description
12/9/2019		Invoice=10913882			regarding settlement.
11/13/2019	10679	Jennifer L. Berhorst	0.3	124.2	Telephone conference with counsel for the
12/9/2019		Invoice=10913882			Wheatley Estate to discuss settlement
					opportunities.
11/13/2019	10679	Jennifer L. Berhorst	0.2	82.8	Draft correspondence to client providing update
12/9/2019		Invoice=10913882			on status of case resolution.
11/13/2019	21524	Sarah R. Holdmeyer	0.6	168	Review Summary Judgment Order entered by the
12/9/2019		Invoice=10913882			court.
11/13/2019	20974	Gregory J. Sachnik	0.3	174	Assess order on Estate's motion for summary and
12/9/2019		Invoice=10913882			impact on next steps.
11/13/2019	10679	Jennifer L. Berhorst	0.3	124.2	Analyze court's order granting motion for
12/9/2019		Invoice=10913882			summary judgment and motions to reinstate
					counterclaims.
11/21/2019	8995	William Perry Brandt	0.5	327.5	Telephone call with D. Berry and emails
12/9/2019		Invoice=10913882			regarding settlement.
11/21/2019	20974	Gregory J. Sachnik	0.2	116	Communicate with Court's case manager regarding
12/9/2019		Invoice=10913882			12/9 trial setting.
11/22/2019	21524	Sarah R. Holdmeyer	1.1	308	Develop strategy for proceeding against
12/9/2019		Invoice=10913882			counterclaims.
11/22/2019	21524	Sarah R. Holdmeyer	0.6	168	Review counterclaims.
12/9/2019		Invoice=10913882			
11/22/2019	20974	Gregory J. Sachnik	0.2	116	Strategize regarding moving trial setting and
12/9/2019		Invoice=10913882			potential settlement.
11/24/2019	21524	Sarah R. Holdmeyer	1.4	392	Begin drafting answer to counterclaims of the
12/9/2019		Invoice=10913882			Wheatley Estate.
11/25/2019	21524	Sarah R. Holdmeyer	1.9	532	Continue drafting answer to counterclaims.
12/9/2019		Invoice=10913882			
11/25/2019	20974	Gregory J. Sachnik	0.1	58	Review communication from opposing counsel
12/9/2019		Invoice=10913882			regarding trial readiness.

[illegible]

Date	Initials	Name / Invoice Number	Hours	Amount	Description
1/8/2020		Invoice=10920508			conference.
12/3/2019	10679	Jennifer L. Berhorst	0.2	82.8	Draft correspondence to client regarding
1/8/2020		Invoice=10920508			recommendations for settlement counter-offer.
12/3/2019	10679	Jennifer L. Berhorst	0.4	165.6	Prepare for case status conference.
1/8/2020		Invoice=10920508			
12/3/2019	10679	Jennifer L. Berhorst	1	414	Research additional claims to be asserted by
1/8/2020		Invoice=10920508			Estate and evaluate potential response to
					settlement offer.
12/3/2019	10679	Jennifer L. Berhorst	0.2	82.8	Analyze settlement offer received from Wheatley
1/8/2020		Invoice=10920508			Estate.
12/3/2019	10679	Jennifer L. Berhorst	0.4	165.6	Appear for case status conference with Court.
1/8/2020		Invoice=10920508			
12/3/2019	21524	Sarah R. Holdmeyer	2.9	812	Review and assess settlement demand of the
1/8/2020		Invoice=10920508			Wheatley Estate; research validity of statutory
					relief asserted by the Wheatley Estate.
12/3/2019	20974	Gregory J. Sachnik	0.2	116	Assess settlement demand by Estate and impact
1/8/2020		Invoice=10920508			on trial setting.
12/4/2019	21524	Sarah R. Holdmeyer	0.2	56	Continue reviewing validity of statutory relief
1/8/2020		Invoice=10920508			asserted by the Wheatley Estate.
12/6/2019	10679	Jennifer L. Berhorst	0.1	41.4	Correspondence with client regarding strategy
1/8/2020		Invoice=10920508			for settlement counteroffer.
12/13/2019	10679	Jennifer L. Berhorst	0.2	82.8	Analyze motion for leave to amend counterclaim
1/8/2020		Invoice=10920508			and proposed counterclaim received from the
					Wheatley Estate.
12/18/2019	10679	Jennifer L. Berhorst	0.5	207	Draft correspondence to opposing counsel
1/8/2020		Invoice=10920508			enclosing settlement counter-offer.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
12/27/2019	10679	Jennifer L. Berhorst	0.1	41.4	Correspondence with opposing counsel regarding
1/8/2020		Invoice=10920508			status of response to settlement offer.
1/3/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze settlement correspondence received from
2/24/2020		Invoice=10927253			opposing counsel.
1/6/2020	10679	Jennifer L. Berhorst	0.6	294	Telephone conference with opposing counsel to
2/24/2020		Invoice=10927253			discuss settlement offer of Wheatley Estate.set
1/6/2020	21963	William J. Easley	0.5	180	Analyze case law regarding damages for consumer
2/24/2020		Invoice=10927253			protection violations in Massachusetts.
1/7/2020	21963	William J. Easley	1.5	540	Analyze Texas case law to determine legal
2/24/2020		Invoice=10927253			standard for determining choice of law.
1/7/2020	21963	William J. Easley	1.1	396	Draft memorandum regarding legal standard for
2/24/2020		Invoice=10927253			determining choice of law.
1/8/2020	21963	William J. Easley	0.9	324	Analyze case law regarding damages under
2/24/2020		Invoice=10927253			consumer protection statutes.
1/8/2020	21963	William J. Easley	1.6	576	Draft memorandum regarding damages under
2/24/2020		Invoice=10927253			consumer protection statutes.
1/8/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze research in preparation for drafting
2/24/2020		Invoice=10927253			updated settlement analysis for client.
1/9/2020	21963	William J. Easley	0.8	288	Draft revisions to consumer protection
2/24/2020		Invoice=10927253			memorandum to incorporate research on possible
					damages for violations.
1/10/2020	10679	Jennifer L. Berhorst	0.4	196	Analyze notice of appeal, research deadline for
2/24/2020		Invoice=10927253			filing appeal and advise client accordingly.
1/10/2020	10679	Jennifer L. Berhorst	0.3	147	Analyze Estate's motion for leave to add
2/24/2020		Invoice=10927253			additional counterclaim.
1/10/2020	10679	Jennifer L. Berhorst	0.8	392	Draft correspondence to client outlining advise
2/24/2020		Invoice=10927253			for settlement resolution.
1/13/2020	10679	Jennifer L. Berhorst	0.1	49	Analyze notice of appeal filed by J. Ward.
2/24/2020		Invoice=10927253			
1/15/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with counsel for Wheatley estate
2/24/2020		Invoice=10927253			regarding potential mediation.
1/23/2020	20974	Gregory J. Sachnik	0.2	119.6	Review multiple submissions by opposing counsel
2/24/2020		Invoice=10927253			for transcripts for appeal.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
1/27/2020	20974	Gregory J. Sachnik	0.2	119.6	Review written discovery sent to John Hancock.
2/24/2020		Invoice=10927253			
1/27/2020	21524	Sarah R. Holdmeyer	6.4	2,246.40	Begin drafting opposition to the Wheatley
2/24/2020		Invoice=10927253			Estate's motion for leave to amend
					counterclaims.
1/27/2020	10679	Jennifer L. Berhorst	0.2	98	Correspondence with opposing counsel regarding
2/24/2020		Invoice=10927253			request for mediation.
1/27/2020	10679	Jennifer L. Berhorst	0.5	245	Analyze additional written discovery requests
2/24/2020		Invoice=10927253			received from opposing counsel including
					30(b)(6) deposition topics.
1/27/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with client regarding settlement
2/24/2020		Invoice=10927253			and newly issued discovery.
1/27/2020	10679	Jennifer L. Berhorst	0.4	196	Strategize regarding response to motion for
2/24/2020		Invoice=10927253			leave to amend.
1/28/2020	10679	Jennifer L. Berhorst	0.3	147	Revise opposition to motion for leave to amend.
2/24/2020		Invoice=10927253			
1/28/2020	10679	Jennifer L. Berhorst	0.7	343	Strategize regarding filing of offer of
2/24/2020		Invoice=10927253			judgment and other settlement strategies.
1/28/2020	10679	Jennifer L. Berhorst	0.2	98	Correspondence with client regarding offer of
2/24/2020		Invoice=10927253			judgment.
1/28/2020	10679	Jennifer L. Berhorst	0.5	245	Telephone conference with client to discuss
2/24/2020		Invoice=10927253			case status and strategy.
1/28/2020	10679	Jennifer L. Berhorst	0.2	98	Direct work on preparation of motion for
2/24/2020		Invoice=10927253			protective order.
1/28/2020	10679	Jennifer L. Berhorst	0.3	147	Prepare for telephone conference with client
2/24/2020		Invoice=10927253			regarding newly issued discovery and
					settlement.
1/28/2020	21524	Sarah R. Holdmeyer	0.5	175.5	Review various state statutes regarding
2/24/2020		Invoice=10927253			remedies in preparation of drafting offer of
					judgment.
1/28/2020	21524	Sarah R. Holdmeyer	1.5	526.5	Discuss and develop strategy in regards to
2/24/2020		Invoice=10927253			motion for leave to amend, settlement,
					mediation, and additional discovery requests;
					review discovery requests to develop strategy
					for motion for protective order.
1/28/2020	21524	Sarah R. Holdmeyer	1.8	631.8	Continue drafting opposition to motion for
2/24/2020		Invoice=10927253			leave to amend; draft offer of judgment.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
1/29/2020	21524	Sarah R. Holdmeyer	0.3	105.3	Draft proposed order denying the Wheatley
2/24/2020		Invoice=10927253			Estate's motion for leave to amend
					counterclaims.
1/30/2020	21524	Sarah R. Holdmeyer	0.4	140.4	Finalize opposition to motion for leave;
2/24/2020		Invoice=10927253			finalize offer of judgment.
1/30/2020	20974	Gregory J. Sachnik	0.2	119.6	Review opposition to motion to amend, agreed
2/24/2020		Invoice=10927253			order and offer of judgment for compliance with
					local rules.
1/30/2020	11546	Guadalupe Rojas-Wiederaenders	1	211.5	
2/24/2020		Invoice=10927253			Finalize revisions to proposed order, response
					and offer of judgment; preparation of documents
					for filing; file all documents; retrieve
					conformed copies and district to all counsel.
1/31/2020	20974	Gregory J. Sachnik	0.1	59.8	Review communication from opposing counsel
2/24/2020		Invoice=10927253			regarding application of MA law.
2/3/2020	10679	Jennifer L. Berhorst	0.1	49	Analyze various pleadings filed with court of
3/9/2020		Invoice=10933747			appeals.
2/4/2020	20974	Gregory J. Sachnik	0.2	119.6	Review appearance form for 5th Circuit.
3/9/2020		Invoice=10933747			
2/4/2020	11546	Guadalupe Rojas-Wiederaenders	0.9	190.35	
3/9/2020		Invoice=10933747			Draft Entry of Appearance for G. Sachnik;
					finalize appearance; finalize preparation of
					documents for submission to court; file,
					download and upload conformed copy to i-Manage.
2/5/2020	10679	Jennifer L. Berhorst	0.3	147	Strategize regarding arguments to include in
3/9/2020		Invoice=10933747			motion for summary judgment.
2/6/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze correspondence received from court of
3/9/2020		Invoice=10933747			appeals regarding mediation program.
2/6/2020	10679	Jennifer L. Berhorst	0.1	49	Draft correspondence to client regarding
3/9/2020		Invoice=10933747			potential for mediation through appeal.
2/6/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with appeal's court clerk
3/9/2020		Invoice=10933747			regarding mediation.
2/6/2020	20974	Gregory J. Sachnik	0.2	119.6	Assess information regarding circuit required
3/9/2020		Invoice=10933747			mediation and communication from mediator.
2/6/2020	21524	Sarah R. Holdmeyer	0.4	140.4	Review discovery requests to develop objection
3/9/2020		Invoice=10933747			to discovery.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
2/7/2020	10679	Jennifer L. Berhorst	0.2	98	Correspondence with counsel for the Wheatley
3/9/2020		Invoice=10933747			Estate regarding participation in mediation and
					status of choice of law issues.
2/9/2020	21524	Sarah R. Holdmeyer	0.3	105.3	Continue drafting motion for protective order
3/9/2020		Invoice=10933747			from discovery and deposition.
2/10/2020	20974	Gregory J. Sachnik	0.3	179.4	Assess reply brief and motion on choice of law
3/9/2020		Invoice=10933747			issues submitted by the Estate.
2/10/2020	21524	Sarah R. Holdmeyer	1.7	596.7	Continue drafting protective order.
3/9/2020		Invoice=10933747			
2/10/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze reply in support of motion for leave to
3/9/2020		Invoice=10933747			amend to add additional counterclaims.
2/12/2020	21524	Sarah R. Holdmeyer	1.7	596.7	Continue drafting motion for protective order.
3/9/2020		Invoice=10933747			
2/14/2020	20974	Gregory J. Sachnik	0.1	59.8	Assess need for additional excerpts from
3/9/2020		Invoice=10933747			transcript for appeal.
2/14/2020	10679	Jennifer L. Berhorst	1.1	539	Revise motion for protective order regarding
3/9/2020		Invoice=10933747			third discovery requests and corporate
					deposition notice.
2/15/2020	21524	Sarah R. Holdmeyer	0.8	280.8	Continue drafting motion for protective order.
3/9/2020		Invoice=10933747			
2/17/2020	10679	Jennifer L. Berhorst	0.5	245	Revise motion for protective order.
3/9/2020		Invoice=10933747			
2/18/2020	10679	Jennifer L. Berhorst	0.2	98	Correspondence with client regarding details of
3/9/2020		Invoice=10933747			conference with 5th circuit court of appeals
					mediator.
2/18/2020	10679	Jennifer L. Berhorst	0.5	245	Telephone conference with 5th Circuit Court of
3/9/2020		Invoice=10933747			Appeals mediator to discuss potential for
					mediation and status of appeal.
2/20/2020	20974	Gregory J. Sachnik	0.2	119.6	Assess summary of appellate mediation and
3/9/2020		Invoice=10933747			additional transcript orders impacting appeal.
2/21/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with client regarding approval
3/9/2020		Invoice=10933747			of motion for protective order.
2/24/2020	11546	Guadalupe Rojas-Wiederaenders	0.5	105.75	
3/9/2020		Invoice=10933747			Receipt and review of ECF notices, download
					documents, send to docketing if necessary and
					distribute.
2/25/2020	11546	Guadalupe Rojas-Wiederaenders	0.8	169.2	Receipt and review of filing for case;

Date	Initials	Name / Invoice Number	Hours	Amount	Description
3/9/2020		Invoice=10933747			preparation of documents for filing.
2/25/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with opposing counsel to meet
3/9/2020		Invoice=10933747			and confer regarding motion for protective order.
2/25/2020	20974	Gregory J. Sachnik	0.3	179.4	Review and revise motion for protective order
3/9/2020		Invoice=10933747			including need for certificate of conference.
2/25/2020	21524	Sarah R. Holdmeyer	0.3	105.3	Continue drafting motion for protective order.
3/9/2020		Invoice=10933747			
2/26/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with opposing counsel to request
3/9/2020		Invoice=10933747			extension on deadline to response to motion for choice of law.
2/26/2020	10679	Jennifer L. Berhorst	0.1	49	Meet and confer with opposing counsel regarding
3/9/2020		Invoice=10933747			consent to motion for protective order in accordance with local rules.
2/27/2020	10679	Jennifer L. Berhorst	0.1	49	Revise order on motion for protective order.
3/9/2020		Invoice=10933747			
2/27/2020	10679	Jennifer L. Berhorst	0.2	98	Revise motion for extension of time to respond
3/9/2020		Invoice=10933747			to motion on choice of law determination.
2/27/2020	20974	Gregory J. Sachnik	0.3	179.4	Revise certificate of conference and draft
3/9/2020		Invoice=10933747			order for motion for protective order.
2/27/2020	11546	Guadalupe Rojas-Wiederaenders	1.2	253.8	
3/9/2020		Invoice=10933747			Draft motion for extension of time to respond
					to motion for determination of choice of law and proposed order.
2/27/2020	11546	Guadalupe Rojas-Wiederaenders	1.1	232.65	
3/9/2020		Invoice=10933747			Revise motion for protective order; draft
					proposed order; preparation of documents for filing; file documents.
2/28/2020	11546	Guadalupe Rojas-Wiederaenders	0.8	169.2	
3/9/2020		Invoice=10933747			Finalize revisions to motion and order for
					extension; finalize preparation of documents for submission to court; file with Court and forward conformed copy to J. Berhorst.
3/3/2020	10679	Jennifer L. Berhorst	0.1	49	Draft correspondence to client requesting
4/13/2020		Invoice=10942062			position on Estate's request for extension of deadlines and approval to being preparation of summary judgment papers.
3/4/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with client regarding status of
4/13/2020		Invoice=10942062			mediation.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
3/5/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with opposing counsel regarding
4/13/2020		Invoice=10942062			request for extension of scheduling order
					deadlines.
3/6/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze motion to revise scheduling order.
4/13/2020		Invoice=10942062			
3/6/2020	21963	William J. Easley	1.3	421.2	Draft correspondence to J. L. Berhorst
4/13/2020		Invoice=10942062			regarding the possibility of submitting an
					offer of settlement and capping damages under
					Massachusetts law.
3/6/2020	21963	William J. Easley	1.2	388.8	Draft correspondence to J. L. Berhorst
4/13/2020		Invoice=10942062			regarding risk of maximum loss if Texas
					versus Massachusetts case law were applied.
3/6/2020	21963	William J. Easley	1.4	453.6	Analyze Massachusetts case law to determine
4/13/2020		Invoice=10942062			risk of loss if Massachusetts law was applied
					to this case.
3/6/2020	21963	William J. Easley	1.2	388.8	Analyze case law regarding consumer protection
4/13/2020		Invoice=10942062			statutes in Texas to prepare response to motion
					to designate case law.
3/6/2020	21524	Sarah R. Holdmeyer	0.3	105.3	Develop strategy in regards to response to
4/13/2020		Invoice=10942062			motion for application of Massachusetts law.
3/7/2020	21963	William J. Easley	1.1	356.4	Revise choice of law memorandum to discuss
4/13/2020		Invoice=10942062			whether the Massachusetts demand requirement
					prior to a consumer protection suit will be
					applied in Texas federal court.
3/9/2020	21963	William J. Easley	0.2	64.8	Outline opposition to motion to designate
4/13/2020		Invoice=10942062			choice of law.
3/9/2020	11546	Guadalupe Rojas-Wiederaenders	0.3	60	
4/13/2020		Invoice=10942062			Receipt and review of ECF notices, download
					documents, send to docketing if necessary and
					distribute.
3/10/2020	10679	Jennifer L. Berhorst	0.4	196	Telephone conference with fifth circuit
4/13/2020		Invoice=10942062			mediator to discuss mediation opportunities.
3/11/2020	21963	William J. Easley	1.8	583.2	Draft response to motion to designate
4/13/2020		Invoice=10942062			massachusetts law.
3/12/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze Wheatley Estate's opposition to motion
4/13/2020		Invoice=10942062			for protective order.
3/12/2020	10679	Jennifer L. Berhorst	0.3	147	Revise opposition to motion for choice of law
4/13/2020		Invoice=10942062			determination.
3/13/2020	21524	Sarah R. Holdmeyer	0.2	70.2	Continue drafting proposed order on the

Date	Initials	Name / Invoice Number	Hours	Amount	Description
4/13/2020		Invoice=10942062			Wheatley Estate's motion regarding choice of law.
3/13/2020	20974	Gregory J. Sachnik	0.2	119.6	Examine response to motion on choice of law and proposed order for compliance with local rules.
4/13/2020		Invoice=10942062			
3/13/2020	11546	Guadalupe Rojas-Wiederaenders	0.9	180	
4/13/2020		Invoice=10942062			Draft, revise and finalize proposed order denying plaintiff's motion for choice of law; preparation for filing and file with Court.
3/14/2020	21524	Sarah R. Holdmeyer	0.8	280.8	Begin reviewing opposition to motion for protective order filed by the Wheatley Estate in preparation of drafting reply.
4/13/2020		Invoice=10942062			
3/16/2020	21524	Sarah R. Holdmeyer	1.1	386.1	Begin drafting reply in support of motion for protective order.
4/13/2020		Invoice=10942062			
3/17/2020	21524	Sarah R. Holdmeyer	1.3	456.3	Continue drafting reply in support of motion for protective order.
4/13/2020		Invoice=10942062			
3/17/2020	20974	Gregory J. Sachnik	0.1	59.8	Review communication from court of appeals regarding transcripts.
4/13/2020		Invoice=10942062			
3/17/2020	11546	Guadalupe Rojas-Wiederaenders	0.2	40	
4/13/2020		Invoice=10942062			Retrieve appeal documents, distribute to counsel and send to docketing.
3/18/2020	21524	Sarah R. Holdmeyer	1.8	631.8	Continue drafting reply in support of motion for protective order.
4/13/2020		Invoice=10942062			
3/18/2020	20974	Gregory J. Sachnik	0.2	119.6	Revise reply in support of motion to quash.
4/13/2020		Invoice=10942062			
3/18/2020	10679	Jennifer L. Berhorst	0.3	147	Analyze motion for leave to amend scheduling order.
4/13/2020		Invoice=10942062			
3/18/2020	10679	Jennifer L. Berhorst	0.5	245	Analyze motion for partial summary judgment filed by Wheatley Estate.
4/13/2020		Invoice=10942062			
3/18/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with client regarding case status.
4/13/2020		Invoice=10942062			
3/18/2020	10679	Jennifer L. Berhorst	0.5	245	Revise reply in support of motion for protective order.
4/13/2020		Invoice=10942062			
3/18/2020	10679	Jennifer L. Berhorst	0.6	294	Strategize regarding response to motion for partial summary judgment.
4/13/2020		Invoice=10942062			

Date	Initials	Name / Invoice Number	Hours	Amount	Description
3/23/2020	21524	Sarah R. Holdmeyer	2.6	912.6	Draft opposition to motion to amend scheduling
4/13/2020		Invoice=10942062			order.
3/24/2020	21524	Sarah R. Holdmeyer	0.2	70.2	Review proposed order on opposition to motion
4/13/2020		Invoice=10942062			for leave to amend scheduling order.
3/24/2020	20974	Gregory J. Sachnik	0.2	119.6	Revise opposition to motion to amend scheduling
4/13/2020		Invoice=10942062			order for compliance with local rules.
3/24/2020	20974	Gregory J. Sachnik	0.1	59.8	Revised proposed order denying motion to amend
4/13/2020		Invoice=10942062			scheduling order.
3/24/2020	10679	Jennifer L. Berhorst	0.2	98	Revise opposition to motion to extend
4/13/2020		Invoice=10942062			scheduling order deadlines.
3/24/2020	11546	Guadalupe Rojas-Wiederaenders	0.5	100	
4/13/2020		Invoice=10942062			Draft proposed order denying defendant's motion
					to modify scheduling order.
3/25/2020	21524	Sarah R. Holdmeyer	0.2	70.2	Final review of proposed order denying motion
4/13/2020		Invoice=10942062			to amend scheduling order.
3/26/2020	20974	Gregory J. Sachnik	0.1	59.8	Finalize opposition to motion to amend
4/13/2020		Invoice=10942062			scheduling order for compliance with local
					rules.
3/26/2020	11546	Guadalupe Rojas-Wiederaenders	0.9	180	
4/13/2020		Invoice=10942062			Finalize response and proposed order (.3);
					finalize preparation of documents for
					submission to court (.3); file with Court (.3).
3/30/2020	20974	Gregory J. Sachnik	0.2	119.6	Review plaintiff's reply brief in support of
4/13/2020		Invoice=10942062			motion to amend scheduling order.
3/30/2020	21524	Sarah R. Holdmeyer	4.5	1,579.50	Review partial summary judgment motion filed by
4/13/2020		Invoice=10942062			the Wheatley Estate and develop strategy for
					response; research in preparation of response;
					begin drafting response.
3/30/2020	10679	Jennifer L. Berhorst	0.2	98	Strategize regarding opposition to motion for
4/13/2020		Invoice=10942062			summary judgment.
3/31/2020	10679	Jennifer L. Berhorst	1.2	588	Revise opposition to motion for summary
4/13/2020		Invoice=10942062			judgment.
3/31/2020	21524	Sarah R. Holdmeyer	2.5	877.5	Continue drafting response to motion for
4/13/2020		Invoice=10942062			summary judgment; review multiple emails with
					counsel for the Wheatley Estate to attach as

Date	Initials	Name / Invoice Number	Hours	Amount	Description
					exhibits to the response.
4/1/2020	21524	Sarah R. Holdmeyer	0.5	175.5	Continue drafting response to motion for
5/8/2020		Invoice=10948406			summary judgment and draft affidavit in support
					of response.
4/2/2020	21524	Sarah R. Holdmeyer	0.2	70.2	Continue drafting declaration of Jennifer
5/8/2020		Invoice=10948406			Berhorst in support of opposition to motion for
					summary judgment and prepare exhibits to same.
4/2/2020	20974	Gregory J. Sachnik	0.3	179.4	Assess response to Estate's motion for summary
5/8/2020		Invoice=10948406			judgment with attached declaration and exhibits
					for compliance with local rules.
4/2/2020	10679	Jennifer L. Berhorst	0.1	49	Analyze documents filed in appeal by J. Ward.
5/8/2020		Invoice=10948406			
4/2/2020	10679	Jennifer L. Berhorst	0.4	196	Revise affidavit in support of opposition to
5/8/2020		Invoice=10948406			motion for summary judgment.
4/3/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with client regarding status of
5/8/2020		Invoice=10948406			review of motion for summary judgment.
4/3/2020	20974	Gregory J. Sachnik	0.4	239.2	Review court and local rules in preparation for
5/8/2020		Invoice=10948406			submission of response on formal submission
					date for the motion.
4/3/2020	21524	Sarah R. Holdmeyer	0.2	70.2	Review proposed order denying motion for
5/8/2020		Invoice=10948406			summary judgment.
4/3/2020	11546	Guadalupe Rojas-Wiederaenders	1.5	317.25	
5/8/2020		Invoice=10948406			Finalize opposition and proposed order and file
					documents with Court.
4/6/2020	11546	Guadalupe Rojas-Wiederaenders	0.7	148.05	
5/8/2020		Invoice=10948406			File response in opposition to motion for
					partial summary judgment with exhibits and
					forward same to counsel.
4/6/2020	20974	Gregory J. Sachnik	0.1	59.8	Finalize response brief for submission.
5/8/2020		Invoice=10948406			
4/21/2020	10679	Jennifer L. Berhorst	0.2	98	Strategize regarding potential postponement of
5/8/2020		Invoice=10948406			trial date.
4/23/2020	10679	Jennifer L. Berhorst	0.1	49	Analyze order setting briefing schedule.
5/8/2020		Invoice=10948406			
4/23/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with opposing parties regarding
5/8/2020		Invoice=10948406			status of dismissal of appeal.
4/23/2020	20974	Gregory J. Sachnik	0.1	59.8	Review multiple minute orders and entries by
5/8/2020		Invoice=10948406			5th Circuit Court of Appeals.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
4/23/2020	11546	Guadalupe Rojas-Wiederaenders	0.3	60	Receipt and review of ECF notices and
5/8/2020		Invoice=10948406			distribution of same.
4/24/2020	20974	Gregory J. Sachnik	0.2	119.6	Communicate with opposing counsel regarding
5/8/2020		Invoice=10948406			non-opposition to motion to dismiss appeal
					without prejudice.
4/24/2020	10679	Jennifer L. Berhorst	0.1	49	Conference with counsel for J. Ward regarding
5/8/2020		Invoice=10948406			dismissal of 5th Circuit appeal.
4/24/2020	10679	Jennifer L. Berhorst	0.1	49	Analyze motion to dismiss appeal filed by J.
5/8/2020		Invoice=10948406			Ward.
4/24/2020	10679	Jennifer L. Berhorst	0.2	98	Correspondence with client regarding status of
5/8/2020		Invoice=10948406			appeal, pending motions and trial date.
4/27/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with counsel for J. Ward
5/8/2020		Invoice=10948406			regarding amended motion to dismiss appeal.
4/27/2020	20974	Gregory J. Sachnik	0.2	119.6	Communicate with opposing counsel regarding
5/8/2020		Invoice=10948406			amended motion to dismiss.
4/28/2020	20974	Gregory J. Sachnik	0.2	119.6	Review multiple amendments to motion to
5/8/2020		Invoice=10948406			dismiss.
4/28/2020	11546	Guadalupe Rojas-Wiederaenders	0.5	100	Receipt and review of new ECF notices and
5/8/2020		Invoice=10948406			distribute same.
4/29/2020	20974	Gregory J. Sachnik	0.1	59.8	Review order dismissing appeal without
5/8/2020		Invoice=10948406			prejudice and denying alternative relief of
					stay.
5/12/2020	21524	Sarah R. Holdmeyer	1	351	Review various pending motions and develop to
6/8/2020		Invoice=10955566			determine settlement and/or trial strategy.
5/12/2020	10679	Jennifer L. Berhorst	0.2	98	Correspondence with client regarding current
6/8/2020		Invoice=10955566			litigation status and prospects for settlement.
5/13/2020	10679	Jennifer L. Berhorst	0.5	245	Correspondence with opposing counsel to discuss
6/8/2020		Invoice=10955566			case status and settlement.
5/13/2020	10679	Jennifer L. Berhorst	0.4	196	Strategize regarding potential tactics to
6/8/2020		Invoice=10955566			achieve final resolution with J. Ward.
5/13/2020	10679	Jennifer L. Berhorst	0.3	147	Telephone conference with client to discuss

Date	Initials	Name / Invoice Number	Hours	Amount	Description
6/8/2020		Invoice=10955566			settlement strategy.
5/13/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with local counsel regarding
6/8/2020		Invoice=10955566			status of Texas federal trials.
5/13/2020	10679	Jennifer L. Berhorst	0.1	49	Draft email correspondence to opposing counsel
6/8/2020		Invoice=10955566			confirming settlement offer.
5/13/2020	20974	Gregory J. Sachnik	0.2	119.6	Strategize regarding trial setting including
6/8/2020		Invoice=10955566			review of local court advisories regarding
					COVID issues.
5/18/2020	10679	Jennifer L. Berhorst	0.1	49	Analyze correspondence from opposing counsel
6/8/2020		Invoice=10955566			regarding decline of settlement offer.
5/18/2020	10679	Jennifer L. Berhorst	0.3	147	Draft correspondence to client advising on
6/8/2020		Invoice=10955566			strategy for resolution of damages issues.
5/20/2020	10679	Jennifer L. Berhorst	0.2	98	Draft correspondence to court clerk in response
6/8/2020		Invoice=10955566			to inquiry regarding trial.
5/20/2020	10679	Jennifer L. Berhorst	0.2	98	Telephone conference with client to discuss
6/8/2020		Invoice=10955566			litigation strategy.
5/20/2020	10679	Jennifer L. Berhorst	0.2	98	Telephone conference with counsel for Whealthey
6/8/2020		Invoice=10955566			Estate to discuss response to court inquiry.
5/21/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with client to provide update on
6/8/2020		Invoice=10955566			communication with court.
5/26/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with client regarding order
6/8/2020		Invoice=10955566			denying addition of counterclaim.
5/26/2020	10679	Jennifer L. Berhorst	0.3	147	Correspondence with client regarding strategy
6/8/2020		Invoice=10955566			for summary judgment hearing.
5/26/2020	10679	Jennifer L. Berhorst	0.3	147	Analyze Court's order denying motion for leave
6/8/2020		Invoice=10955566			to add counterclaims.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
5/26/2020	20974	Gregory J. Sachnik	0.1	59.8	Review court order denying Wheatly's motions to
6/8/2020		Invoice=10955566			amend and reopen discovery.
5/26/2020	21524	Sarah R. Holdmeyer	0.3	105.3	Review order denying several of the Estate's
6/8/2020		Invoice=10955566			motions.
5/26/2020	9483	Ann Woepfel	0.2	47.6	Prepare motion for pro hac admission for W. P.
6/8/2020		Invoice=10955566			Brandt.
5/27/2020	10679	Jennifer L. Berhorst	3.3	1,617.00	Prepare for hearing on the Wheatley Estate's
6/8/2020		Invoice=10955566			motion for summary judgment including review of
					all relevant pleadings and preparation of
					outline.
5/27/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with opposing counsel regarding
6/8/2020		Invoice=10955566			settlement.
5/27/2020	10679	Jennifer L. Berhorst	0.2	98	Correspond with client regarding approval of
6/8/2020		Invoice=10955566			settlement strategy.
5/27/2020	10679	Jennifer L. Berhorst	0.4	196	Strategize regarding renewed settlement
6/8/2020		Invoice=10955566			efforts.
5/28/2020	10679	Jennifer L. Berhorst	1	490	Prepare for and attend hearing on motion for
6/8/2020		Invoice=10955566			partial summary judgment and correspond with
					client regarding the same.
5/29/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze settlement offer received from opposing
6/8/2020		Invoice=10955566			counsel and correspond with client regarding
					the same.
6/2/2020	10679	Jennifer L. Berhorst	0.1	49	Analyze minute entry entered by Court regarding
7/8/2020		Invoice=10962054			decision on motion for partial summary
					judgment.
6/3/2020	20974	Gregory J. Sachnik	0.1	59.8	Review order on motion for summary judgment.
7/8/2020		Invoice=10962054			

Date	Initials	Name / Invoice Number	Hours	Amount	Description
6/4/2020	10679	Jennifer L. Berhorst	0.4	196	Telephone conference with client to discuss
7/8/2020		Invoice=10962054			response to settlement offer.
6/5/2020	20974	Gregory J. Sachnik	0.1	59.8	Review minute order canceling bench trial.
7/8/2020		Invoice=10962054			
6/10/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with counsel for the Wetly
7/8/2020		Invoice=10962054			Estate regarding status of provision of
					attorney bills to analyze settlement offer.
6/18/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with opposing counsel regarding
7/8/2020		Invoice=10962054			extension of time to serve attorneys' fee
					motion.
6/19/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with counsel for J. Ward
7/8/2020		Invoice=10962054			regarding potential settlement of claims.
6/19/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze memorandum filed by J. Ward regarding
7/8/2020		Invoice=10962054			finalization of attorneys' fee award prior to
					appeal.
6/22/2020	10679	Jennifer L. Berhorst	0.4	196	Telephone conference with counsel for J. Ward
7/8/2020		Invoice=10962054			regarding settlement prospects.
6/23/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with opposing counsel regarding
7/8/2020		Invoice=10962054			revision to minute entry related to dismissal
					of counterclaims.
6/24/2020	10679	Jennifer L. Berhorst	0.2	98	Telephone conference with counsel for the
7/8/2020		Invoice=10962054			Wheatly Estate to discuss modification of
					minute entry related to partial summary
					judgment.
6/25/2020	10679	Jennifer L. Berhorst	0.2	98	Analyze Wheatly Estate's motion for
7/8/2020		Invoice=10962054			reconsideration of Court's May 28, 2019 minute
					entry to determine whether to consent to
					motion.
6/25/2020	10679	Jennifer L. Berhorst	0.2	98	Draft correspondence to client regarding
7/8/2020		Invoice=10962054			attorney's fee motion and advise regarding
					response.
6/25/2020	10679	Jennifer L. Berhorst	2	980	Calculate reduced attorneys' fee sum through
7/8/2020		Invoice=10962054			detailed analysis of billing statements.
6/25/2020	10679	Jennifer L. Berhorst	0.4	196	Strategize regarding potential responses to
7/8/2020		Invoice=10962054			motion.
6/25/2020	10679	Jennifer L. Berhorst	0.5	245	Analyze motion for attorneys fees and
7/8/2020		Invoice=10962054			supporting materials filed by the Wheatly
					Estate.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
6/29/2020	10679	Jennifer L. Berhorst	0.1	49	Follow up with client regarding opposition to
7/8/2020		Invoice=10962054			motion to revise order.
6/30/2020	10679	Jennifer L. Berhorst	0.5	245	Direct work on preparation of response to
7/8/2020		Invoice=10962054			Wheatly's attorney's fees motion.
6/30/2020	21524	Sarah R. Holdmeyer	0.5	175.5	Review the Wheatly Estate's motion for attorney
7/8/2020		Invoice=10962054			fees and develop strategy for responding to
					same.
7/1/2020	21524	Sarah R. Holdmeyer	5.3	1,860.30	Review cases cited in the Wheatley Estate's
					brief in support of its request for attorneys'
					fees (.8); additional research in preparation
					of drafting opposition to the Wheatley Estate's
					brief (1.2); begin drafting opposition to the
					Wheatley Estate's brief (2.9); prepare table of
					contents and appendix for opposition (.4).
7/2/2020	10679	Jennifer L. Berhorst	0.6	294	Revise opposition to Wheatley Estate's motion
					for attorneys fees.
7/3/2020	20974	Gregory J. Sachnik	0.1	59.8	Strategize for finalizing materials to be
					submitted to court.
7/6/2020	20974	Gregory J. Sachnik	0.6	358.8	Review response to Wheatley's claim for fees
					including revisions to draft order and finalize
					for submission to court.
7/6/2020	10679	Jennifer L. Berhorst	0.1	49	Analyze notice of hearing received from court.
7/6/2020	10679	Jennifer L. Berhorst	0.1	49	Correspondence with client regarding final
					approval of opposition to Wheatley Estate's
					motion for attorney fees.
7/6/2020	11546	Guadalupe Rojas-Wiederaenders	1.8	360	Finalize revisions to opposition; finalize
					appendix and exhibits; draft and finalize
					order; preparation of documents for submission
					to court; communication with attorneys
					forwarding conformed copy.
7/7/2020	20974	Gregory J. Sachnik	0.2	119.6	Review hearing transcript.
7/9/2020	10679	Jennifer L. Berhorst	2.5	1,225.00	Prepare for hearing on competing motions for
					attorneys' fees.
7/9/2020	10679	Jennifer L. Berhorst	0.5	245	Argue motion for attorneys fees at hearing.

Date	Initials	Name / Invoice Number	Hours	Amount	Description
7/9/2020	10679	Jennifer L. Berhorst	1.4	686	Create factual timeline of relevant claims documentation in support of opposition to motion for reconsideration of dismissal of counterclaims.
7/10/2020	10679	Jennifer L. Berhorst	0.6	294	Begin drafting opposing to motion for reconsideration.
7/10/2020	21524	Sarah R. Holdmeyer	0.2	70.2	Develop strategy to opposing motion for reconsideration.
7/13/2020	21524	Sarah R. Holdmeyer	3.7	1,298.70	Research availability of attorneys' fee award for fees incurred for proceedings beyond initial interpleader action (1.2); continue drafting opposition to motion to revise order (1.8); prepare exhibits for opposition to motion to review order (.5); review proposed order denying motion to revise order (.2).
7/13/2020	20974	Gregory J. Sachnik	0.3	179.4	Review opposition to motion to modify and exhibits to ensure compliance with local rules.
7/13/2020	10679	Jennifer L. Berhorst	0.5	245	Begin drafting supplemental affidavit in support of motion for attorneys' fees.
7/13/2020	10679	Jennifer L. Berhorst	3.5	1,715.00	Complete draft of opposition to motion for reconsideration of dismissal of statutory attorneys' fees claim.
7/13/2020	11546	Guadalupe Rojas-Wiederaenders	1.8	360	Draft, revise and finalize proposed order regarding opposition to motion for revised order; preparation of exhibits; finalize revisions to order and opposition; finalize preparation of documents for submission to court.
Total Fees Invoiced from 9/1/2019 to 7/13/2020:				78206.95	
Write-Off By Client:				15,000.00	
Total Fee Request from 9/1/2019 to 7/13/2020:				63,206.95	

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

**JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.) f/k/a John Hancock
Life Insurance Company**

Plaintiff,

V.

Case No. 4:18-CV-02869

**THE ESTATE OF JENNIFER LAUREN
WHEATLEY, et al.**

Defendants.

**TABLE OF CONTENTS TO APPENDIX TO
PLAINTIFF’S MOTION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES
AND SUGGESTIONS IN SUPPORT**

Coface N. Am. Ins. Co. v. Woodlands Export, LLC

No. 4:15-CV-621, 2016 WL 4361462, at * 4-5 (S.D. Tex. Aug. 15, 2016)..... **A-1 – A-5**

Duncan v. OXY Srvs., Inc.

No. H-05-1661, 2005 WL 8164431, at *2 (S.D. Tex. Dec. 27, 2005) **A-6 – A-8**

Westlake Styrene, LLC v. U.S.

No. H-10-2631, 2011 WL 643265, at *3-4 (S.D. Tex. Feb. 16, 2011) **A-9 – A-11**

Respectfully submitted this 14th day of July, 2020.

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ *Jennifer L. Berhorst*

Gregory J. Sachnik

Texas Bar No. 17503800

S.D. Texas No. 9757

2200 Ross Avenue, Suite 3300

Dallas, Texas 75201

(214) 721.8000 – Telephone

(214) 721.8100 – Fax

E-Mail: Gregory.sachnik@bclplaw.com

Admitted Pro Hac Vice:

W. Perry Brandt
Missouri Bar No. 28292
Jennifer L. Berhorst
Missouri Bar No. 61784
1200 Main Street, Suite 3800
Kansas City, MO 64105-2100
Telephone: (816) 374-3200
Facsimile: (816) 374-3300
perry.brandt@bclplaw.com
jennifer.berhorst@bclplaw.com

*Attorneys for Plaintiff John Hancock Life
Insurance Company (U.S.A.)*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

**JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.) f/k/a John Hancock
Life Insurance Company**

Plaintiff,

V.

Case No. 4:18-CV-02869

**THE ESTATE OF JENNIFER LAUREN
WHEATLEY, et al.**

Defendants.

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the foregoing **TABLE OF CONTENTS TO APPENDIX TO PLAINTIFF’S MOTION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES AND SUGGESTIONS IN SUPPORT** via the Court’s CM/ECF filing system which automatically sends a copy of same to counsel of record, as follows:

H. Clay Moore
4314 Yoakum Blvd., Suite 2E
Houston, TX 77006
moorelaw1@sbcglobal.net
Attorney for Defendant Jeremy G. Ward

M. Douglas Berry
Gabriel Berry & Weston L.L.P.
214 Commerce Place
Greensboro, NC 27401
doughberry@gbllaw.com

Herbert A. Janzen
4301 Yoakum Boulevard
Houston, Texas 77006
herbjanz.en.office@yahoo.com
Attorneys for Defendant the Estate of Jennifer Lauren Wheatley

Ariel N. Wiley
U.S. Attorney's Office
1000 Louisiana, Suite 2300
Houston, TX 77002

Ariel.wiley@usdoj.gov
Attorneys for Defendant USDOJ

Respectfully submitted this 14th day of July, 2020.

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ Jennifer L. Berhorst

Gregory J. Sachnik
Texas Bar No. 17503800
S.D. Texas No. 9757
2200 Ross Avenue, Suite 3300
Dallas, Texas 75201
(214) 721.8000 – Telephone
(214) 721.8100 – Fax
E-Mail: Gregory.sachnik@bclplaw.com

Admitted Pro Hac Vice:

W. Perry Brandt
Missouri Bar No. 28292
Jennifer L. Berhorst
Missouri Bar No. 61784
1200 Main Street, Suite 3800
Kansas City, MO 64105-2100
Telephone: (816) 374-3200
Facsimile: (816) 374-3300
perry.brandt@bclplaw.com
jennifer.berhorst@bclplaw.com

*Attorneys for Plaintiff John Hancock Life
Insurance Company (U.S.A.)*

2016 WL 4361462

Only the Westlaw citation is currently available.

United States District Court,
S.D. Texas, Houston Division.

Coface North America Insurance Company, Plaintiff,

v.

Woodlands Export, LLC, et al, Defendants.

CIVIL ACTION NO. 4:15-CV-621

|

Signed 08/15/2016

|

08/16/2016

Attorneys and Law Firms

David Alan Walton, Parsons McEntire McCleary & Clark, PLLC, Dallas, TX, for Plaintiff.

Nicole Ruble Metcalf, Michael Lee Knappek, Stephanie Collett Sparks, Jackson Walker LLP, Dallas, TX, John F. Carroll, Attorney at Law, San Antonio, TX, Jared A. Ullman, Michael W. Ullman, Ullman & Ullman, PA, Boca Raton, FL, for Defendants.

ORDER AND OPINION

MELINDA HARMON, UNITED STATES DISTRICT JUDGE

*1 Before the Court is Plaintiff Coface North America Insurance Company's ("Coface's") Motion for Attorneys' Fees. (Document No. 46). None of the other parties in the case have filed a Response. Having considered Plaintiff's Motion and the applicable law, the Court concludes the Plaintiff's Motion is GRANTED.

Background

Plaintiff filed its Complaint (Document No. 1) in interpleader against Defendants Woodlands Export, LLC ("Woodlands"), BBVA Compass Bank ("Compass"), as successor of Laredo National Bank ("LNB"), and DF Deutsche, pursuant to Federal Rule of Civil Procedure 22. Defendants presented conflicting claims "to all or part of the proceeds under trade credit insurance policy number E-4890294 [the "Policy"] issued by CofaceNA to Woodlands." (Document No. 27 at 1). Coface did not dispute that \$2,700,000.00 plus applicable

interest [the "Policy Proceeds"] was due under the Policy, but stated that it was "unable to dis[bu]rse the Policy Proceeds without potentially exposing itself to duplicative claims or liabilities." *Id.* at 2. Therefore, Coface moved for leave to deposit the Policy Proceeds into the Court's registry,¹ and "request [ed] a discharge from liability as to the amounts deposited into the Court's registry, [] a dismissal from this action with prejudice, and [] an injunction against all competing claimants from commencing or prosecuting any claim or action against CofaceNA regarding the Policy Proceeds." *Id.* The Court granted Coface's Motion (Document No. 45) and ordered that Coface make an application requesting reimbursement of costs expended and reasonable attorneys' fees. Therefore Coface submitted its Motion for Attorneys' Fees, "seeking \$54,910.28 in reasonable, equitable, and just attorney's fees and costs." (Document No. 46 at 1). Coface was represented by Beirne, Maynard & Parsons, LLP ("BMP"), which is located in Dallas, Texas. *Id.* at 9.

Standard of Review

A district court has the authority and the discretion to award attorney's fees in successful interpleader suits to a disinterested stakeholder whenever it is fair and equitable to do so. *Rhoades v. Casey*, 196 F.3d 592, 603 (5th Cir. 1999), cert. denied, 531 U.S. 924 (2000) (citing *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 696 F.2d 359, 364 (5th Cir. 1983)). "[A]s a general rule, when an interpleader action is successful, the court often awards costs, as well as attorney's fees, to the stakeholder." *Murphy v. Travelers Ins. Co.*, 534 F.2d 1155, 1164 (5th Cir. 1976). See also *Helt v. Sambina Properties, Ltd.*, No. 4:15-CV-760, 2016 WL 3198623, at *5 (E.D. Tex. June 9, 2016). The fee is usually modest because "all that is necessary is the preparation of a petition, the deposit in the court or posting of a bond, service on the claimants, and the preparation of an order discharging the stakeholder." 7 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1719 (3d ed. 2001) (hereinafter "*Federal Practice and Procedure*"). The Fifth Circuit requires only that the award be reasonable. *James Talcott, Inc. v. Allahabad Bank, Ltd.*, 444 F.2d 451, 468 (5th Cir. 1971). Commentators suggest five factors relevant to awarding fees in an interpleader case: (1) whether the case is simple; (2) whether the stakeholder performed any unique services for the claimants or the court; (3) whether the stakeholder acted in good faith and with diligence; (4) whether the services rendered benefitted the stakeholder; and (5) whether the claimants improperly protracted the

proceedings. *Royal Indem. Co. v. Bates*, 307 Fed.Appx. 801, 806 (5th Cir. 2009) (citing *Federal Practice and Procedure*, § 1719).

*2 “In an ordinary diversity case [such as this], awards of attorney’s fees are governed by applicable state law.” *Perkins State Bank v. Connolly*, 632 F.2d 1306, 1310 (5th Cir. 1980) (citing *Alyeska Pipeline Service v. Wilderness Society*, 421 U.S. 240, 259 n. 31 (1975) (“In an ordinary diversity case where the state law does not run counter to a valid federal statute or rule of court, and usually it will not, state law denying the right to attorney’s fees or giving a right thereto, which reflects a substantial policy of the state, should be followed.”)). “Texas interpleader law entitles an innocent stakeholder to recover its attorney’s fees from the funds it deposits if it has a reasonable doubt with respect to which claimant is entitled to the fund.” *RSL-3B-IL, Ltd. v. Prudential Ins. Co. of Am.*, 470 S.W.3d 131, 139 (Tex. App. 2015) (citations omitted). “Texas courts look to many of the same factors as do the federal courts in making attorney-fee awards.” *Robinson v. State Farm Fire & Cas. Co.*, 13 F.3d 160, 164 (5th Cir. 1994) (citing *Atlantic Richfield Co. v. Manges*, 702 F.2d 85, 87 (5th Cir. 1983)).

“The initial estimate of a reasonable attorney’s fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate,” a sum commonly called the “lodestar.” *Blum v. Stenson*, 465 U.S. 886, 888 (1984). “[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant...should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). There is a strong presumption that the lodestar is a reasonable fee, and the fee applicant bears the burden of demonstrating that an upward adjustment by application of the *Johnson* factors is necessary to calculate a reasonable fee. *Walker v. Dept. of HUD*, 99 F.3d 761, 771 (5th Cir. 1996); *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 324 (5th Cir. 1995), *cert denied*, 516 U.S. 862 (1995).

A reasonable hourly rate is that rate in the community for such legal services rendered by attorneys of comparable skill, experience, and reputation. *Heidtman v. County of El Paso*, 171 F.3d 1039, 1043 (5th Cir. 1999); *Alberti v. Klevenhagen*, 896 F.2d 927, 936 (5th Cir. 1990), *vacated in part on other grounds*, 903 F.2d 352 (5th Cir. 1990). A reasonable hourly rate should be in accord with rates “prevailing in

the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” *Blum*, 465 U.S. at 895-96 n.11. The fee applicant bears the burden of producing evidence that the requested rate is appropriate within the relevant community. *Condon v. Hunting Energy Services, L.P.*, Civ. A. No. H-04-3411, 2006 WL 2882857, at *2 (S.D. Tex. Oct. 4, 2006).

In addition to the community rate, the district court must also consider the attorneys’ regular rates. *Louisiana Power*, 50 F.3d at 328. Generally when an attorney’s requested hourly rate is his customary rate, when it is within the range of prevailing market rates, and when the rate is not contested, it is viewed as *prima facie* reasonable. *Id.* at 329. To establish the reasonableness of his requested rate, the fee applicant should produce satisfactory evidence beyond his own affidavit “that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Blum*, 465 U.S. at 896 n.11. Furthermore, the court may exercise its own expertise and judgment in making an independent valuation of appropriate attorney fees. *Davis v. Bd. of Sch. Comm’rs of Mobil County*, 526 F.2d 865, 868 (5th Cir. 1976).

*3 The court must determine whether the hours expended by the prevailing party’s counsel were “reasonably expended,” both as to the total number of hours claimed and the specific hours claimed. *Condon*, 2006 WL 2882857, at *2 (citing *Louisiana Power*, 50 F.3d at 329). The fee applicant bears the burden of showing that the hours claimed were reasonably expended. *Hensley*, 461 U.S. at 437. Compensable hours, reasonably spent, are determined from the attorney’s contemporaneous time or billing records or other documentation which the district court must examine to discern which hours are compensable and which are not. *Id.* at 434; *Louisiana Power*, 50 F.3d at 324.

The fee applicant should exercise “billing judgment” and keep billing time records in a way that enables the reviewing court to “identify distinct claims.” *Hensley*, 461 U.S. at 437. *See also Gagnon v. United Technisource, Inc.*, 607 F.3d 1036, 1044 (5th Cir. 2010) (An applicant for fees must submit documentation, e.g., contemporaneous billing records or detailed invoices or affidavits, to permit the court to identify noncompensable hours and to determine an appropriate amount of fees.). Counsel must “exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary....” *Id.* *See also Saizan v. Delta*

Concrete Products Company, 448 F.3d 795, 799 (5th Cir. 2006) (“[P]laintiffs seeking attorney’s fees are charged with the burden of showing the reasonableness of the hours billed and, therefore, are also charged with proving that they exercised billing judgment. Billing judgment requires documentation of the hours charged and of the hours written off as unproductive, excessive, or redundant. The proper remedy for omitting evidence of billing judgment does not include a denial of fees but, rather, a reduction of the award by a percentage intended to substitute for the exercise of billing judgment.” [footnotes omitted]); *Louisiana Power*, 50 F.3d at 324-25 (“[T]he documentation must be sufficient for the court to verify that the applicant has met its burden....[A] district court may reduce the number of hours awarded if the documentation is *vague* or *incomplete*....Failing to provide contemporaneous billing statements does not preclude an award of fees per se as long as the evidence produced is adequate to determine reasonable hours.”).

In determining what is a reasonable fee, the courts in the Fifth Circuit must consider the factors set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds*, *Blanchard v. Bergeron*, 489 U.S. 87 (1989) (holding that a fee award under § 1988 should not be capped by a contingent fee agreement between the attorney and his client). The twelve *Johnson* factors are (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-19.²

*4 While the lodestar is relevant to determining a fee award, it is not the sole basis for determining that award; the *Johnson* factors are applicable to deciding whether the lodestar is reasonable, as well as to adjusting that award by a multiplier once the lodestar is calculated. *Abrams v. Baylor College of Medicine*, 805 F.2d 528, 536 (5th Cir. 1986) (“The time and hours spent on a case are a necessary ingredient in determining a fee award, but they should not be the sole basis for determining a fee. The *Johnson* factors govern the determination of reasonableness itself; they are not merely

factors to be considered in adjusting the award once the lodestar is calculated.”) (citing *Johnson*, 488 F.2d at 717).

As noted, based on one or more *Johnson* factors, the court may apply a multiplier to adjust the lodestar up or down if that factor or factors are not already taken into account by the lodestar, itself. *Strong*, 137 F.3d at 850. An adjustment may only be made if the *Johnson* factor has not already been accounted for in the lodestar. *In re Fender*, 12 F.3d 480, 487 (5th Cir. 1994), *cert. denied*, 511 U.S. 1143 (1994); *Shipes v. Trinity Indus.*, 987 F.2d 311, 320 (5th Cir. 1993) (“[T]he district court must be careful...not to double count a *Johnson* factor already considered in calculating the lodestar when it determines the necessary adjustments.”), *cert. denied*, 510 U.S. 991 (1993).

Four of the *Johnson* factors are presumably included in the lodestar calculation: the novelty and complexity of the issues, the special skill and experience of counsel, the quality of representation, and the results obtained from the litigation. *Blum*, 465 U.S. at 898-99; *Shipes*, 987 F.2d at 320. “Although upward adjustments of the lodestar figure based on these factors are still permissible, such modifications are proper only in certain rare and exceptional cases supported by specific evidence on the record and detailed findings by the lower courts.” *Id.* The Fifth Circuit has also held that two other factors, time limitations imposed by the client or the circumstances and preclusion of other employment, are generally subsumed in the lodestar calculation, too. *Shipes*, 987 F.3d at 321-22; *Heidtman v. City of El Paso*, 171 F.3d 1038, 1043 (5th Cir. 1999).

Discussion

Interpleader Factors

The Court finds that Coface should receive attorneys’ fees pursuant to the “general rule” in interpleader cases. *Murphy*, 534 F.2d at 1164. Furthermore, the factors typically weighed in awarding fees in an interpleader suit suggest that Coface should receive fees. Although the case was simple, did not involve unique services, and ultimately provided benefits to Coface, factors (3) and (5) strongly weigh in favor of awarding fees. Coface made reasonable, good faith efforts to determine the rights of the competing claimants to the Policy Proceeds. (Document No. 46 at 3). Furthermore, claimant DF Deutsche improperly protracted the proceedings by filing an inconsistent Response to Coface’s Motion to Dismiss (Document No. 34), and protracted the proceedings by filing

counterclaims against Coface which were not supported by law. (See Court's Order and Opinion, Document No. 45).

Hourly Rate

Coface has suggested hourly rates of \$365 for David Walton (a partner with 12 years of experience), \$315 for Robert Rosen and Sarah Sparling (associates with experience of 8 and 6 years, respectively³), and \$115 for Candy Ryan (a legal assistant⁴ with 26 years of experience). (Document No. 46 at 10). The Motion also states that these rates “are the regular hourly rates for the BMP attorneys and legal assistance,” and cites several cases for the proposition that these rates are within the range of prevailing market rates. *Id.* at 10-11. See *Miller v. Raytheon Co.*, 716 F.3d 138, 149 (5th Cir. 2013) (“reduced hourly rates of \$577.50, \$542.50, and \$280 were reasonable, customary rates”); *Rouse v. Target Corp.*, No. 3:15-CV-48, 2016 WL 319871, at *3 (S.D. Tex. Jan. 26, 2016) (\$500 per hour rate was reasonable for partner with over 21 years of experience in labor and employment law, and \$300 per hour was reasonable for associate with just 2 years of experience); *Preston Expl. Co., LP v. GSP, LLC*, No. CIV.A. H-08-3341, 2013 WL 3229678, at *5 (S.D. Tex. June 25, 2013) (“\$407.03/hour for partners, \$224.27/hour for associates, and \$132.84/hour for legal assistants [was] reasonable in the Houston market” for breach of contract case); *Richardson v. Tex-Tube Co.*, 843 F. Supp. 2d 699, 709 (S.D. Tex. 2012) (\$350/hour reasonable for partner with eighteen years of experience, and \$125/hour reasonable for a paralegal); *Fluor Corp. v. Citadel Equity Fund Ltd.*, No. 3:08-CV-1556-B, 2011 WL 3820704, at *5 (N.D. Tex. Aug. 26, 2011) (“In other cases involving Texas lawyers, the hourly rates range from \$220 for associates to \$510 for senior partners.”) (citing cases). Given that these rates are customary for these attorneys, fit within the range allowed by recent case law, and are not contested by any other party, the Court finds that these rates are reasonable. *Louisiana Power*, 50 F.3d at 329 (“Generally when an attorney's requested hourly rate is his customary rate, when it is within the range of prevailing market rates, and when the rate is not contested, it is viewed as *prima facie* reasonable.”).

Hours Expended

*5 Plaintiff has included extensive records of the hours spent on this case. (Document No. 46-1). Plaintiff states that “approximately 143 hours were spent to bring this interpleader action, to participate in discovery and motion practice, to be dismissed with prejudice upon depositing

the amounts in the Court's registry, and to receive an injunction against all competing claimants from commencing or prosecuting any claim or action against CofaceNA regarding the policy proceeds.” (Document No. 46 at 12). Specifically, 49.70 hours were spent on pleadings, 15 hours were spent on pretrial, 32.30 hours were spent on motion practice, and 46.10 hours were spent on discovery. *Id.* Walton spent 91.30 hours on the case, Rosen spent 37.30, Sparling spent 5.80, and Ryan spent 8.60. *Id.* at 13. The Court has examined the billing time records, and believes that Plaintiff has met its burden in demonstrating that the hours claimed were reasonably expended. *Hensley*, 461 U.S. at 437.

Johnson Factors

Plaintiff does not request an adjustment to the lodestar based upon these factors, but the Court must still weigh the *Johnson* factors in determining whether the fee is reasonable. The twelve *Johnson* factors are (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-19. However the Court will not weigh factors (2), (3), (4), (7), (8), and (9) because they are presumably included in the lodestar calculation. *Blum*, 465 U.S. at 898-99; *Shipes*, 987 F.2d at 320-2; *Heidtman*, 171 F.3d at 1043.

(1) As discussed above, the Court believes that the hours claimed were reasonable. (5) Customary fees for the attorneys were also discussed above. (6) The fee in this case was hourly. (10) No “undesirability” of the case is alleged here. (Document No. 46 at 18). (11) BMP has represented Coface since 2012. *Id.* (12) Coface states that it is not aware of awards made in similar litigation within and without the Court's circuit. *Id.* However the Court has found information on awards in other interpleader cases. See *Rhoades*, 196 F.3d at 603 (affirming award of \$23,951); *James Talcott*, 444 F.2d at 451 (affirming award of \$25,000); *Massachusetts Mut. Life Ins. Co. v. Sanders*, 787 F. Supp. 2d 628, 642 (S.D. Tex. 2011) (awarding \$20,392.11); *Amlin Corp. Member, Ltd. v. Logistics Grp. Int'l, Inc.*, No. CIV.A. H-09-2695, 2011 WL 1044048, at *6 (S.D. Tex. Mar. 17, 2011) (noting that Court

previously awarded interpleader plaintiff \$16,216.69 in fees). Although these awards are lower than the amount requested by BMP, some of these cases are much older, and, as discussed above, DF Deutsche added unnecessarily to BMP's workload, requiring BMP to spend more hours than is typical for an interpleader case.

The Court finds that none of these factors weigh heavily in favor of an increase or decrease to the lodestar calculation, and that they generally suggest that the calculation is reasonable.

Costs

Coface requests \$5,412.28 in costs. (Document No. 46 at 2). Coface does not detail these costs in its Motion, but review of the billing records submitted suggests these costs include items such as copying, delivery services, subpoena fees, printing, research, court fees, litigation support vendors, and travel. (Document No. 46-1 at 18, 23, 48). These costs

appear to be reasonable, and therefore the Court finds that it is fair and equitable to award them. *Rhoades*, 196 F.3d at 603.

Conclusion

*6 The court has reviewed Walton's affidavit relating to its costs and fees and finds that the hours expended, the billing rate, and the expenses are reasonable. The court hereby

GRANTS Plaintiff's Motion (Document No. 46) and AWARDS Plaintiff \$54,910.28 in attorneys' fees and expenses, which shall be paid from the policy proceeds that are in the court's registry.

SIGNED at Houston, Texas, this 15th day of August, 2016.

All Citations

Not Reported in F.Supp.3d, 2016 WL 4361462

Footnotes

- 1 Coface deposited the funds into the Court's Registry on February 29, 2016.
- 2 Similarly, Texas courts determine reasonableness by applying the *Arthur Andersen* factors. These factors are:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
 - (2) the likelihood...that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the expertise, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Preston Expl. Co., LP v. GSP, LLC, No. CIV.A. H-08-3341, 2013 WL 3229678, at *2-3 (S.D. Tex. June 25, 2013) (citing *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997)).
- 3 In his affidavit, Walton states that both associates have been licensed to practice law in Texas since 2007. (Document No. 46-1 at 2). It is unclear which statement is correct, but the fact that both are billed at the same rate seems to suggest they have the same amount of experience.
- 4 Work by paralegals may only be recovered to the extent that it is similar to that typically performed by attorneys; otherwise it is an unrecoverable overhead expense. *Coleman v. Houston Independent School District*, 202 F.3d 264 (5th Cir. 1999) (citing *Allen v. United States Steel Corp.*, 665 F.2d 689, 697 (5th Cir. Unit B 1982)). The Court has reviewed the work billed by Ryan and believes it to be "similar to that typically performed by attorneys." *Id.*

2005 WL 8164432

Only the Westlaw citation is currently available.

United States District Court,
S.D. Texas, Houston Division.

Beverly Ann DUNCAN, Plaintiff,
and
Tamara Duncan, Intervenor,
v.

OXY SERVICES, INC. and Occidental
Petroleum Corp., Defendants.

Civil Action No. H-05-1661

|
Signed 12/27/2005

Attorneys and Law Firms

Frank Bennett Harvie, Jr., Patrick Aaron Huzinec, Novelli
Harvie et al, Houston, TX, for Plaintiff.

Jason Andrew Cox, Tammy C. Manning, Galligan and
Manning, Houston, TX, for Intervenor.

ORDER GRANTING ATTORNEYS' FEES

Nancy F. Atlas, United States District Judge

*1 Defendants Oxy Services, Inc. and Occidental Petroleum Corporation have filed a Fee Petition [Doc. # 32] requesting approximately \$30,000 in attorneys' fees and expenses to be paid from the \$252,647.47 Defendants interpleaded in the Court's Registry pending determination of competing claims filed by Plaintiff Beverly Ann Duncan and Intervenor Tamara Duncan. Intervenor objects [Doc. # 40] to Defendants' Fee Petition on the grounds that it is untimely and, alternatively, that the fees and costs requested were unnecessary, inequitable and unfair. Intervenor requests further that if the Court assesses any fees, they should be assessed solely against Plaintiff. Plaintiff has not responded to the Fee Petition.

The Court carefully has considered Defendants' Fee Petition, supporting affidavits and other data and exhibits, Intervenor's objection, Defendants' reply to that objection [Doc. # 42], as well as all other matters of record in this case. The Court finds that many of the hours expended fees were warranted and an award of \$20,000 is appropriate. This sum will be deducted from the interpleaded funds. Taxable costs shall be paid by

Plaintiff. All other costs and expenses shall be borne by the party incurring same.

Intervenor first objects that the Fee Petition was untimely. This objection is rejected as entirely unfounded. The Court's Order directing the filing of the Fee Petition (the "Order") was entered on the docket of this case on September 27, 2005 [Doc. # 27].¹ Defendant's Fee Petition was filed timely on October 11, 2005, fourteen days from the entry of the Order, as directed.

The Court turns to the Fee Petition and Intervenor's more substantive objections. "A district court has the authority to award reasonable attorney's fees in interpleader actions." *Rhodes v. Casey*, 196 F.3d 592, 603 (5th Cir. 1999) (citing *Corrigan Dispatch Company v. Casa Guzman, S.A.*, 696 F.2d 359, 364 (5th Cir. 1983)). "The award of attorney's fees is in the discretion of the district court, and fees are available when the interpleader is a disinterested stakeholder, and is not in substantial controversy with one of the claimants." *Id.* (citing *Phillips Petroleum Company v. Hazlewood*, 534 F.2d 61, 63 (5th Cir. 1976)). Defendants are pure stakeholders in this case. Although Defendants were sued by Plaintiff, Defendants did not take sides for or against her in the dispute with Intervenor.² Defendants simply sought to provide the appropriate forum for resolution of the competing claims for the ERISA plan benefits in issue. Defendants thus are entitled to reasonable and necessary attorneys' fees.

*2 Typically, attorneys' fee requests in the Fifth Circuit are governed by a "lodestar" analysis whereby the party seeking fees must show the "reasonableness" and necessity of (1) the number of hours expended to adjudicate the dispute, and (2) the proponent's hourly rate. *Riley v. City of Jackson, Miss.*, 99 F.3d 757, 760 (5th Cir. 1996); accord *Heidtman v. County of El Paso*, 171 F.3d 1038, 1043 (5th Cir. 1999). Once the court identifies the lodestar figure, it then must set the award based on further analysis of the factors set out *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).³ After making the lodestar calculation, the district court may decrease or enhance the lodestar figure based on the relative weights of the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). See *Heidtman*, 171 F.3d at 1043 (citing *Shipes v. Trinity Industries*, 987 F.2d 311, 319-20 (5th Cir. 1993)). The lodestar may not be adjusted due to a *Johnson* factor, however, if the creation of the lodestar award already took that factor into account. *Id.* Such reconsideration is impermissible double-counting. *Id.*

More hours were necessary and reasonable in this interpleader case than the typical interpleader litigation. Many of the issues raised by Plaintiff and Intervenor, which Defendants had to address, were unfounded. By way of example, Plaintiff objected to this Court's jurisdiction and sought remand of this case to state court. After receiving Defendants' opposition to the remand motion and some negotiation, Plaintiff withdrew her motion. Plaintiff for some unknown reason insisted on responses from Defendants to broad requests for discovery. Plaintiff did not cooperate in drafting the interpleader order. Plaintiff failed to take the lead, as appropriate, in preparing the draft scheduling order for the initial pretrial conference, leaving the task to Defendants' counsel. It was Defendants that brought Intervenor into this litigation. For some time, Intervenor inexplicably refused to agree to interpleading the contested funds.⁴ Defendants thus needed to address numerous issues that do not typically arise in an interpleader action. Defendants' pleadings substantially assisted the Court and were informative, well-reasoned, and concise. The authorities cited were apt.

The Court notes, however, that there appears to have been an enormous number of communications between defense counsel and their clients. The hours expended drafting certain relatively straightforward pleadings, such as the proposed interpleader order, appear to exceed the norm. Also, most of the issues were not novel or particularly difficult and, for the most part, did not require highly skilled counsel. While the rates charged by counsel and their legal assistant are not unreasonable for persons of comparable skill in the Houston legal community, there is an issue as to whether so much of the work had to be performed by such senior attorneys.

In a different vein, reimbursement for a portion of the legal research hours appears unreasonable because that portion of the research appears to have been associated with basic administration of the ERISA plan, not with issues raised by the competing claimants in this litigation, *i.e.*, which of decedent Duncan's two putative wives was entitled to the ERISA benefits. The Court cannot ignore that an ERISA plan administrator has a contractual duty to attempt to resolve core issues raised in the course of plan administration, which issues include taxability of benefits, alternative financial vehicles by which to transfer benefits to beneficiaries, and preliminary analysis of competing claims interposed by heirs or relatives

of plan participants. Finally, the Court is unpersuaded that Defendants are entitled to recover attorneys' fees for time spent preparing a fee application. Thus, Defendants must bear some portion of the burden of the legal costs.

*3 Under all the facts and circumstances presented, the Court concludes that Defendants are entitled to recover \$20,000 in attorneys' fees and the fees should be paid from the interpleaded funds.⁵ The Court recognizes that this result may pose an arguable inequity to the extent Intervenor, who is entitled to the plan benefits, will have to bear the burden of this fee award when it was not her conduct that caused many of the hours and fees incurred. Nevertheless, to prevail, Intervenor needed the Court's determination regarding the proper distribution of funds and the Court could not do so until the case was in the appropriate posture.

Because Plaintiff initiated this action and did not prevail on any issues, Plaintiff shall bear the taxable costs of this suit, which shall be determined in accordance with 28 U.S.C. § 1920. All other costs shall be borne by the party incurring same. It is therefore

ORDERED that Defendants' Fee Petition is **GRANTED** in part. It is further

ORDERED that Defendants are **AWARDED** \$20,000 in attorneys' fees which shall be paid from the monies in the Court's Registry for this case. It is further

ORDERED that Plaintiff shall pay the taxable costs of court in this case. All other expenses shall be borne by the party incurring same. It is further

ORDERED that, after the \$20,000 in attorneys' fees has been paid to Defendants, all remaining interpleaded principal and interest shall be disbursed for the benefit of Intervenor Tamara Duncan by check payable to Pershing, L.L.C., 11140 Rockville Pike, 4th Floor, Rockville, MD 20852-3144. The check shall be delivered to Tammy Manning, 802 W. Alabama, Houston, Texas, 77006, counsel for Intervenor.

All Citations

Slip Copy, 2005 WL 8164432

Footnotes

- 1 The Court signed the Order on September 21, 2005, but it was not docketed for six days, until September 27. This type of delay is the reason that the Court measures time for actions by parties from “entry” of orders on the official docket, not from the date an order is signed.
- 2 See, e.g., Defendant OXY INC.’s Unopposed Motion for Leave to File Counterclaim for Interpleader [Doc. # 16]; Defendant OXY INC.’s Counterclaim for Interpleader [Doc. #17]; Motion for Summary Judgment [Doc. # 24] filed by Tamara Duncan; Response to Motion for Summary Judgment [Doc. # 28] filed by Beverly Ann Duncan.
- 3 The *Johnson* factors are:
 1. The time and labor required;
 - 2 The novelty and difficulty of the questions presented;
 3. The skill requisite to properly perform the legal services;
 4. Preclusion of other employment by the attorney due to acceptance of the case;
 5. The customary fee;
 6. Whether the fee is fixed or contingent;
 7. Time limitations imposed by the client;
 8. The amount involved and the results obtained;
 9. The expertise, reputation and ability of attorneys;
 10. The undesirability of the case;
 11. The nature and length of the professional relationship with the client;
 12. Awards in similar cases.

Id. at 717-19.
- 4 Defendants also addressed issues involving a life insurance policy provided by or through Defendants to the decedent.
- 5 The Court has considered all other *Johnson* lodestar factor; the record does not contain probative information on the remaining factors and they do not affect the fee determination.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

2011 WL 643265

Only the Westlaw citation is currently available.

United States District Court,
S.D. Texas,
Houston Division.

WESTLAKE STYRENE, LLC, Plaintiff,

v.

UNITED STATES of America, et al., Defendants.

Civil Action No. H-10-2631.

|
Feb. 16, 2011.

Attorneys and Law Firms

[Stephen H. Lee](#), Porter Hedges LLP, Houston, TX, for Plaintiff.

[Thomas M. Herrin](#), Department of Justice, Dallas, TX, [Lisa Ann Powell](#), Jackson Walker LLP, Houston, TX, [W. Fulton Broemer](#), Broemer & Assoc LLC, Houston, TX, [Charles Bennett Mitchell, Jr.](#), Brown Doon, et. al., Fort Worth, TX, [Christopher Michael Portner](#), Reaud Morgan et. al., Beaumont, TX, for Defendants.

MEMORANDUM AND ORDER

[GRAY H. MILLER](#), District Judge.

*1 Before the court in this interpleader action is a motion by plaintiff Westlake Styrene, LLC (“Westlake”), asking that it be discharged with prejudice from this lawsuit upon payment of the disputed funds (“Fund”) into the court's registry. Dkt. 21. After review of the motion, the responses, the reply, and the applicable law, the motion is GRANTED IN PART AND DENIED IN PART. Westlake will be permitted to pay the Fund into the registry of the court, and is DISMISSED from this lawsuit. No party will be able to file any further claims against the Fund.

BACKGROUND

Westlake filed an original interpleader petition in the 269th Judicial District of Harris County, Texas, on June 29, 2010, alleging that it had settled a lawsuit whereby it agreed to pay \$1,490,000 to Compass Bank and/or Quality

Contract Services, Inc. (“Quality”). Dkt. 1–1. However, due to competing claims to any monies due and owing to Quality, Westlake sought to pay the Fund into the court registry and sought an order dismissing it from the action. *Id.*

The United States of America removed the matter to this court on July 23, 2010, on the basis that the claim asserted by the Internal Revenue Service (“IRS”) to the Fund invokes this court's federal question jurisdiction. Dkt. 1. Defendant Louisiana Crane filed its answer on July 30, 2010, and asserted that it had a priority right to the Fund, although it did not assert a counterclaim against Westlake. Dkt. 8.

Westlake now seeks an order permitting it to pay the Fund into the registry of the court, and discharging it from this suit with prejudice. Dkt. 21. Westlake seeks to be relieved of “any and all liability to the Claimants with respect to the subject matter of this interpleader action....” *Id.* at 7–8. Defendants Compass Bank and the United States do not oppose the relief sought by Westlake. Dkts. 22, 23.

Louisiana Crane objects to Westlake's motion, and asserts that Westlake, along with Quality, improperly settled the underlying state court litigation without either obtaining Louisiana Crane's consent, or ensuring that a judgment Louisiana Crane obtained in Louisiana state court would be satisfied. Dkt. 24 at 5–6. Louisiana Crane contends that if it does not recover the full amount of its judgment from the Fund¹, it will assert a counterclaim against Westlake based upon Louisiana law.

I. Interpleader.

A traditional interpleader suit is an equitable action involving a disinterested plaintiff-stakeholder who either is, or may be, exposed to multiple liability or multiple litigation over an identifiable fund to which there are two or more mutually inconsistent claims. *Hussain v. Boston Old Colony Ins. Co.*, 311 F.3d 623, 631 (5th Cir.2002). The purpose of interpleader is to enable the plaintiff, who is also the stakeholder, to avoid “the burden of unnecessary litigation or the risk of loss by the establishment of multiple liability when only a single obligation is owing.” *Hussain*, 311 F.3d at 631 (citing *Texas v. Florida*, 306 U.S. 398, 412 (1939)); *White v. FDIC*, 19 F.3d 249, 251 (5th Cir.1994) (defining interpleader as a “procedural device which entitles a person holding money or property, concededly belonging at least in part to another, to join in a single suit two or more persons asserting mutually exclusive claims to the fund”).

*2 Courts possess broad discretion in interpleader actions. *Rhoades v. Casey*, 196 F.3d 592, 600–601 (5th Cir.1999). An interpleader action typically proceeds in two stages. First, the court decides whether the requirements for an interpleader action have been met by determining if there is a single fund at issue with more than one adverse claimant to that fund. *Id.* In this case, all parties concede that the elements of an interpleader action have been met. Second, if the court finds the interpleader action has been properly brought, it will then make a determination of the respective rights of the claimants. *Id.* The parties have not yet reached the second stage, but are now involved in a dispute concerning Westlake's status in this matter.

A stakeholder lacking an interest in the fund should be discharged from the action upon payment of the fund into the court registry. 7 *Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure* § 1714 (3d ed. 2010) (“When the court decides that interpleader is available, it may issue an order discharging the stakeholder, if the stakeholder is disinterested”). However, there is nothing preventing a party from asserting a counterclaim against a stakeholder in an interpleader action. “Once the stakeholder joins the claimants, a claimant may file a counterclaim against the stakeholder as an opposing party.” *New York Life Ins. Co. v. Deshotel*, 142 F.3d 873, 881 (5th Cir.1998). In fact, a counterclaim in an interpleader action may be compulsory if it arises from the same “transaction or occurrence” and could be subject to dismissal if not timely asserted. *Deshotel*, 142 F.3d at 882 (dismissing claim against insurer for negligence in processing change of beneficiary form on basis it was compulsory counterclaim in interpleader action). The assertion of a counterclaim against a stakeholder is an appropriate basis for denying discharge. *See Allstate Life Ins. v. Short*, 2005 WL 1972551 (S.D. Ohio, Aug. 12, 2005) (stakeholder not discharged on basis of counterclaim for independent liability against insurer for negligent loss of change of beneficiary form). This is not to say, however, that all counterclaims against stakeholders are appropriate. Claims against a stakeholder that are not independent of the interpleaded fund, such as a claim that the stakeholder should have paid the fund to a particular claimant rather than seek interpleader, are routinely dismissed because they would deprive the stakeholder of the intended benefit of an interpleader action. *Met. Life Ins. Co. v. Barretto*, 178 F.Supp.2d 745, 747–48 (S.D. Tex. 2001). Counterclaims that assert liability on the part of the stakeholder independent

of the counterclaimant's rights to the disputed fund can, however, be asserted. *E. g., Deshotel*, 142 F.3d at 882.

II. Analysis

The parties here do not contest the propriety of the interpleader action in this case. Westlake has possession of the Fund, there are competing claims to the Fund, and Westlake itself has no such claim. Therefore, the first stage of the analysis is quite simple. Westlake has satisfied the requirements for filing an interpleader action, and it will be permitted to pay the Fund into the registry of the court.

*3 The dispute in this matter is with respect to Westlake's status in this case going forward. As noted above, a stakeholder with no interest in the fund at issue is normally discharged from the suit, and the claimants are left to litigate their competing claims. The only party objecting to Westlake's motion seeking discharge in this matter is Louisiana Crane. More specifically, Louisiana Crane argues that, should it not obtain full satisfaction of its claim from the interpleaded funds, then Westlake would be independently liable for any shortfall.

There is, however, no counterclaim asserted against Westlake in this case by any defendant. Indeed, Louisiana Crane's argument appears to be that it *might* choose to file such a counterclaim in the future. Louisiana Crane's potential claim against Westlake is not properly before the court for decision at this time.² While the court has authority to deny discharge to a stakeholder against whom a counterclaim has been asserted, it is unaware of any case supporting the proposition that a stakeholder with no interest in the interpleaded funds should be denied discharge on the basis of a potential counterclaim.³ Accordingly, Westlake will be permitted to pay the Fund into the registry of the court and it will be dismissed from this case.

III. Attorneys fees.

An award of costs and reasonable attorneys' fees in an interpleader action is within the discretion of the court. *Rhoades v. Casey*, 196 F.3d at 603. In fact, “costs and attorney's fees are generally awarded by federal courts to the plaintiff who initiated the interpleader as a mere stakeholder” *Mass. Indem. & Life Ins. Co.*, 700 F.Supp. 307 (M.D. La. 1988) (citing *Perkins State Bank v. Connolly*, 632 F.2d 1306 (5th Cir. 1980)). A stakeholder should be denied costs and fees only when it was “in substantial

controversy with one of the claimants” and, hence, was not “disinterested.” *Rhoades v. Casey*, 196 F.3d at 603.

Here, the only controversy has been between Westlake and Louisiana Crane, and it involves a potential counterclaim that has not been pleaded. The court finds that this is not a substantial controversy for purposes of Westlake's request for costs and attorneys fees. Westlake is a disinterested shareholder with respect to the fund, and to the claims that are before the court. Westlake's request for attorneys' fees and costs is GRANTED.

Attorneys' fees and costs “are generally awarded against the interpleader fund, but may, in the discretion of the court, be taxed against one of the parties when their conduct justifies it.” *Septembertide Pub., B.V. v. Stein and Day, Inc.*, 884 F.2d 675, 683 (2d Cir.1989) (citing *Prudential Ins. Co. of Am. v. Boyd*, 781 F.2d 1494, 1497–98 (11th Cir.1986)). Here, the only impediment to this case proceeding as a “normal” interpleader action, with Westlake paying the funds into the court and then being discharged, has been Louisiana Crane's insistence that Westlake should not be dismissed because of a counterclaim that Louisiana Crane has prevented this court from addressing by not asserting it. If Louisiana Crane has a ripe counterclaim, it ought to have been raised. If it does not, it should not have engaged the parties and the court in unnecessary motions practice.

*4 Westlake's attorneys' fees and costs should, therefore, be paid as follows: (1) all sums associated with the initial filing of this interpleader action shall be paid from the Fund; and (2) all costs and fees associated with the filing the motion to dismiss (Dkt.21) and related pleadings shall be paid by Louisiana Crane.

CONCLUSION

No party objects to the motion seeking to have the funds held by Westlake deposited into the court's registry. Thus, Westlake is authorized to pay the fund into the registry of the court and, upon such payment, is DISCHARGED from this suit. The parties are ENJOINED from filing any claims against the Fund in any other court. The court declines to rule prospectively on the viability of any claim that Louisiana Crane may or may not choose to assert in the future.

Westlake shall file a statement of its attorneys' fees and expenses on or before February 28, 2011, in accordance with the above ruling. Objections to the statement of fees, if any, shall be filed on or before March 7, 2011.

Signed at Houston, Texas on February 16, 2010.

All Citations

Not Reported in F.Supp.2d, 2011 WL 643265

Footnotes

- 1 The total claims against the \$1,490,000 fund in this case amount to more than \$13,000,000.
- 2 As Circuit Judge Garza recently noted, “[f]ederal courts are only permitted to rule upon an actual ‘case or controversy,’ and lack jurisdiction to render merely advisory opinions beyond the rulings necessary to resolve a dispute.” *Whitehouse Hotel Ltd. Partnership v. C.I.R.*, 615 F.3d 321, 343 (5th Cir.2010).
- 3 And, for that matter, a potential counterclaim that may be barred for one or more reasons if and when it is asserted. This same lack of a justiciable controversy also prevents the court from ruling on Westlake's motion to the extent it seeks to adjudicate a claim that has not been pleaded.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.